Office-Supreme Court, U.S.
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MAY 28 1985
ALEXANDER L. STEVAS,
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No. 84-1872.

In the Supreme Court of the United States.

OCTOBER TERM, 1984.

CONSOLIDATED RAIL CORPORATION,
PETITIONER,

v.

HALLAMORE MOTOR TRANSPORTATION, INC.,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS.

Petition for Certiorari.

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Question Presented for Review.

Whether the Supreme Judicial Court of Massachusetts decided a federal question in a way in conflict with applicable decisions of this Court and of the federal courts of appeals by holding that the Interstate Commerce Act does not apply to the determination of the liability of the respondent, Hallamore Motor Transportation, Inc. ("Hallamore") for the freight charges of the petitioner, Consolidated Rail Corporation ("Conrail"), a common carrier in interstate commerce, where the undisputed facts were that (1) Conrail shipped goods from Iowa to Worcester, Massachusetts in accordance with railway bills of lading and waybills which named Hallamore as consignee; (2) Hallamore unloaded, received and accepted the freight; (3) Hallamore exercised dominion and control over the freight; (4) there is no evidence of an express contract between Conrail and Hallamore to relieve Hallamore of its obligation as consignee to pay the freight charges; (5) the consignor of the shipment executed the "nonrecourse clause" of the bills of lading; and (6) the beneficial owner of the freight was named in the bills of lading only under the rubric "Send Freight Bill To" or "For Transshipment To."

I isting of Parties to the Proceedings in the Courts Below.

SUBSIDIARIES AND AFFILIATES OF THE PETITIONER, CONSOLIDATED RAIL CORPORATION.

Subsidiaries.

Calumet Western Railway Co.
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(Incorporated in Illinois)

Conrail Equity Corporation
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Indiana Harbor Belt Railroad Co.
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Penn Central Communications Corp.
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Pennsylvania Truck Lines, Inc.
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Wynnewood, PA 19096
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Affiliates.

The Akron & Barberton Belt RR Co.
Six Penn Center Plaza
Philadelphia, PA 19104
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The Lakefront Dock & Railroad Terminal Co.
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The Monongahela Railway Co.
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Affiliates Cont'd.

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Philadelphia, PA 19104
(Incorporated in New York)

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3400 Terminal Tower
Cleveland, OH 44101
(Incorporated in West Virginia)

Peoria & Pekin Union Railway Co.
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Creve Coeur, IL 61611
(Incorporated in Illinois)

Pittsburgh, Chartiers & Youghiogheny Railway Co.
Pittsburgh & Lake Erie RR Terminal Building
Pittsburgh, PA 15219
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The St. Lawrence & Adirondack Railway Co.
Six Penn Center Plaza
Philadelphia, PA 19104
(Incorporated in New York)

Trailer Train Co.
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Table of Contents.

Reports of opinions below 1

Jurisdictional statement 2

Statutes construed 2

Statement of the case 3

I. Statement of facts 3

II. Procedural history 4

Argument 6

I. By holding that the interstate commerce act does not govern the disposition of this case, the Massachusetts Supreme Judicial Court has directly contradicted applicable precedent of this court 6

A. This Court has held that the Interstate Commerce Act determines liability in cases such as the instant action 6

B. The facts of this case do not fall within the narrow exceptions to the statutory rules recognized by this Court or by any federal court of appeals 9

II. Under the Interstate Commerce Act, Hallamore is liable for the freight charges 11

A. The Interstate Commerce Act makes a consignee strictly liable for freight charges unless the consignee gives prior written notice to the carrier that it has no beneficial interest in the freight 11

1. Courts have long interpreted the Interstate Commerce Act as imposing strict liability upon consignees 11

2. The legislative history of the Act reveals that the drafters intended to impose strict liability on consignees as a general rule 14

3. Because Hallamore "accepted" the freight in this case, it is liable for Conrail's freight charges 15

4. Hallamore failed to give the requisite written notice to Conrail of its lack of beneficial interest in the shipment 17

B. The SJC's decision of this case has barred Conrail from discharging its duty under the Interstate Commerce Act to collect its freight charge 17

Conclusion 18

Appendix follows p. 19

Table of Authorities Cited.

CASES.

Arizona Feeds v. Southern Pacific Trans. Co., 21 Ariz. App. 346, 519 P.2d 199 (1974) 16

Chicago & Northwestern Transp. Co. v. Krohn Cartage Co., 79 Wis.2d 39, 255 N.W. 2d 310 (1977) 15, 16

Consolidated Freightways Corp. v. Admiral Corp., 442 F.2d 56 (7th Cir. 1971) 9, 10

Consolidated Rail Corp. v. Hallamore Motor Transportation, Inc., 394 Mass. 56, 473 N.E.2d 1137 (1985) 1, 6, 7, 9, 13 et seq.

Detroit, T. & I. Ry. Co. v. Maxine's Potato Service, Inc., 13 Ohio App. 3d 157, 468 N.E.2d 361 (1983) 13

Great Northern Ry. Co. v. Hyder, 279 F. 783 (D.C. Wash. 1922) 12, 13

Louisville & Nashville R.R. Co. v. Central Iron Co., 265 U.S. 59 (1924) 8, 12, 13, 18

New York Central and H. R. Ry. Co. v. York & Whitney Co., 256 U.S. 406 (1921), reversing in part and affirming in part 230 Mass. 206 (1918) 12

Northwestern Pacific R.R. Co. v. Burchwell, 349 F.2d 497 (5th Cir. 1965) 14n

Payment of Detention Charges, Eastern Central States, 335 ICC Rep. 537 (1969), aff'd sub nom. Middle Atlantic Conference v. U.S., 353 F.Supp. 1109 (D. D.C. 1972) 17

Penn Central Transp. Co. v. United Aero Marine Services, Inc., 91 Misc. 2d 839, 398 N.Y.S. 2d 780 (1977) 15

Pennsylvania R. Co. v. Seiter, 61 Ohio App. 497, 22 N.E. 2d 843 (1939) 14, 15

Pittsburgh, Cincinnati, Chicago & St. Louis Ry. v. Fink, 250 U.S. 577 (1919) 7, 8, 12

Southern Pac. Transp. Co. v. Commercial Metals, 456 U.S. 336, 102 S.Ct. 1815 (1982) 10

States Marine International, Inc. v. Seattle-First Nat. Bank, 524 F.2d 245 (9th Cir. 1975) 15, 16

Union Pacific R. Co. v. American Smelting & Refining, Co., 202 F. 720 (8th Cir. 1912) 12

Union Pacific R. Co. v. Riss International Corp., 687 P.2d 993 (Colo. App. 1984) 10, 13

United States v. Constantine, 296 U.S. 287 (1935) 11

Werner Transp. Co. v. Shimon, 249 Wis. 87, 23 N.W. 2d 519 (1946) 16

Western & Atlantic R. Co. v. Underwood, 218 F. 891 (D. Ga. 1922) 12

STATUTES.

28 U.S.C. § 1257(3) 2

49 U.S.C. § 3(2) 15n

49 U.S.C. § 10741	2
§ 10744	2, 5, 9, 14, 17
§ 10744(a)(1)	11, 17
§ 10751	2
§ 10761	2
§ 11902	3, 18
§ 11903	3, 18
§ 11904	3, 18
Pub. L. 95-473	2, 3
96-296	2
96-448	2
24 Stat. 379 (1980)	2
32 Stat. 847	3
34 Stat. 587	3
44 Stat. 1447	2, 14
92 Stat. 1390 (1978)	2
92 Stat. 1394 (1978)	2
92 Stat. 1437	3
92 Stat. 1457	3
94 Stat. 825	2
94 Stat. 826	2
Act of 1903	3
Act of 1906	3
Act of 1927, c. 510	2, 14

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Petition for Certiorari.

Reports of Opinions Below.

The opinion of the Supreme Judicial Court of Massachusetts in this case is reported at 394 Mass. 56 and 473 N.E.2d 1137 (1985).

No other opinion of a court in this case has been published.

Jurisdictional Statement.

The final judgment of the Supreme Judicial Court for which review is sought was entered on March 15, 1985.

The Supreme Judicial Court of Massachusetts rendered an opinion on February 11, 1985, but final judgment was stayed pending consideration of Consolidated Rail Corporation's petition for rehearing submitted to the Supreme Judicial Court on February 21, 1985 and denied by the Court on February 27, 1985.

This Court has jurisdiction to review the judgment of the Supreme Judicial Court of Massachusetts on certiorari under 28 U.S.C. § 1257(3).

Statutes Construed.

The text of the following statutes appears in the Appendix at pp. 38-49.

49 U.S.C. § 10741 (1982 ed.), Pub. L. 95-473, 92 Stat. 1390 (1978) (recodifying Interstate Commerce Act, 24 Stat. 379 (1887)).

49 U.S.C. § 10744 (1982 ed.), Pub. L. 95-473, 92 Stat. 1390 (1978) (recodifying Interstate Commerce Act, 24 Stat. 379 (1887), as amended by Act of March 4, 1927, c. 510, 44 Stat. 1447)).

49 U.S.C. § 10751 (1982 ed.), Pub. L. 96-296, § 33(a), 94 Stat. 824 (1980), as amended by Pub. L. 96-448, title II, § 215(a). 94 Stat. 1915 (1980).

49 U.S.C. § 10761 (1982 ed.), Pub. L. 95-473, § 1, 92 Stat. 1394 (1978) (recodifying Interstate Commerce Act, 24 Stat. 379 (1887)); Pub. L. 96-296, § 33(c) 94 Stat. 825 (adding subsection (c)).

49 U.S.C. § 11902 (1982 ed.), Pub. L. 95-473, § 1, 92 Stat. 1437 (1978) (recodifying Interstate Commerce Act as amended by Act of Feb. 19, 1903, c. 708.

49 U.S.C. § 11903 (1982 ed.), Pub. L. 95-473, § 1, 92 Stat. 1457 (1978) (recodifying Interstate Commerce Act as amended by Act of Feb. 19, 1903, c. 708, § 1, 32 Stat. 847 and Act of June 29, 1906, c. 3591, § 2, 34 Stat. 587).

49 U.S.C. § 11904 (1982 ed.), Pub. L. 95-473, § 1, 92 Stat. 1457 (1978) (recodifying Interstate Commerce Act as amended).

Statement of the Case.

I. Statement of Facts.[1]

Conrail is a rail carrier engaged in interstate commerce (A.S. 1). Hallamore is a motor carrier also engaged in interstate commerce (A.S. 2). Conrail commenced this action against Hallamore to recover freight charges for shipping crane components from Cedar Rapids, Iowa to Worcester, Massachusetts, from which point they were picked up by Hallamore and delivered by its trucks to Quonset Point, Rhode Island. The crane components were shipped at the request FMC Corporation ("FMC"), on behalf of Davis Machinery Company, Inc. ("Davis"), under bills of lading dated February 21 and February 27, 1979 (Exhibits: App. 29-35). When the crane components arrived at the Worcester terminal, Hallamore unloaded them and carried them away in its own trucks (A.S. 12). The bills of

[1] All facts stated are based upon the Agreed Statement of Facts and Exhibits, which appear in the Appendix at 13-15 and 29-35. For the convenience of the Court, references will be to specific paragraphs of the Agreed Statement of Facts, abbreviated as "A.S."

lading and waybills issued for the cargo named Hallamore as the consignee (A.S. 8). The consignor had executed the "non-recourse clause" of the bills of lading (Exhibits: App. 29-35).

Hallamore did not have beneficial title to the goods and was acting solely as agent for transshipment of the cargo (A.S. 16), however, it failed to give Conrail written notice of this fact prior to unloading the freight and taking it away (A.S. 18). The beneficial owners of the freight were named on the bills of lading only under the rubrics "For Transshipment To" and "Sent Freight Bill To." (Exhibits: App. 29-35). Conrail had received and was aware of the contents of copies of the waybills and bills of lading (naming Hallamore as consignee) prior to Hallamore unloading the freight (A.S. 15). Hallamore did not receive or see copies of the waybills until Conrail commenced this action to collect the freight charges (A.S. 7), but Hallamore, a common carrier, did unload the freight and take it away, delivering it to Eastern Steel Services at Quonset Point, Rhode Island (A.S. 12, 21).

II. Procedural History.

Conrail brought this action in the Boston Municipal Court Department of the Trial Court of the Commonwealth of Massachusetts ("Boston Municipal Court") to recover freight charges in the amount of $9,118.57 on January 10, 1980, alleging that Hallamore was listed on Conrail waybills as "consignee." The waybills attached to the complaint as exhibits revealed that the shipment sued upon had moved across state lines, thereby raising the federal question underlying this petition.

Hallamore filed its amended and substituted answer in February, 1983, admitting that it was designated as consignee on

the waybills but denying that it was the actual consignee and setting forth its affirmative defenses, among which the first was failure to state a claim upon which relief can be granted, thus raising an actual controversy over the federal question underlying this petition. (The Complaint appears in the Appendix at page 50; the Answer appears at page 52.)

The case was submitted to the Boston Municipal Court upon an Agreed Statement of Facts as a "case stated." (The Agreed Statement of Facts is quoted verbatim in the opinion of the Appellate Division of the Boston Municipal Courts, which appears at page 19 in the Appendix ["App."].) The parties submitted memoranda in support of their respective cross motions for summary judgment, addressing the federal question in controversy. (Defendant's Memorandum at 4-10, App. at 59-64 (arguing that 49 U.S.C. § 10744 does not impose liability on named consignee in absence of contract); Plaintiff's Memorandum at 2-11, App. at 68-74 (arguing that under 49 U.S.C. § 10744 and cases interpreting it, a named consignee who accepts freight is always liable for the freight charges).) The court heard argument on February 7, 1983. On March 7, 1983, the court found for Conrail (Entry and Notice of Judgment and Finding: App. 17-18). Hallamore made a timely request for a report, the functional equivalent of an appeal under Massachusetts Rules of Appellate Procedure, and, on May 3, 1983, the trial judge reported the decision to the Appellate Division of the Boston Municipal Court ("Appellate Division") for determination (Draft Report: App. 12-16). In this report, the trial judge duly noted the federal question in controversy between the parties, describing it as the question whether 49 U.S.C. § 10744 imposes liability upon Hallamore (Draft Report at 6: App. at 15). In an opinion and order dated May 4, 1984, the Appellate Division affirmed the judgment and dismissed Hallamore's report (Opinion and Order: App. 19-27). In its opinion, the Appellate Division addressed and

discussed the federal question in controversy (Opinion at 4-9: App. at 22-27). Hallamore then appealed to the Supreme Judicial Court of Massachusetts ("SJC").

The SJC reversed the judgment of the Appellate Division in an opinion dated February 11, 1985. *Consolidated Rail Corp.* v. *Hallamore Motor Transportation, Inc.*, 394 Mass. 56, 473 N.E.2d 1137 (1985). In its opinion, the SJC addressed the federal question in controversy and resolved it by ruling that the Interstate Commerce Act did not apply to the facts of the case. *Hallamore, supra,* 394 Mass. at 57, 473 N.E.2d at 1138. Conrail filed a petition for rehearing in the SJC on February 21, 1985, in which Conrail attempted to persuade the SJC that it had erred by ruling that the Interstate Commerce Act did not apply to the case (App. 76). The SJC denied Conrail's petition on February 27, 1985 (Letter from Clerk of SJC to counsel for Conrail: App. 36), and entered final judgment in favor of Hallamore on March 15, 1985 (Order: App. 11).

Argument.

I. By Holding that the Interstate Commerce Act does Not Govern the Disposition of This Case, the Massachusetts Supreme Judicial Court Has Directly Contradicted Applicable Precedent of This Court.

A. *This Court Has Held that the Interstate Commerce Act Determines Liability in Cases Such as the Instant Action.*

The conflict between the SJC's decision of this case and the applicable decisions of this Court lies in its failure to apply the provisions of the Interstate Commerce Act to the facts pre-

sented. After stating the facts, the SJC prefaced its holding with the following statement:

> Hallamore's liability is to be determined by common law principles and is not governed by any provision of the Interstate Commerce Act. . . .

Hallamore, 394 Mass. at 57; 473 N.E.2d at 1138.

Although the SJC cited applicable decisions of this Court, it did not follow them but rather reached a result in direct conflict with them. The first applicable decision of this Court which the SJC cited but then disregarded or misconstrued is *Pittsburgh, Cincinnati, Chicago & St. Louis Ry.* v. *Fink*, 250 U.S. 577 (1919). The defendant Fink was the consignee of a shipment of Indian relics, for which the plaintiff railroad billed Fink $15.00. Later, the railroad found it had mistakenly under-billed Fink and sued to collect the remainder of the amount that it should have billed under its tariffs. In determining the applicable law, this Court said:

> Examination shows some conflict of authority as to the liability at common law of the consignee to pay freight charges under the circumstances here shown. The weight of authority seems to be that the consignee is *prima facie* liable for the payment of the freight charges when he accepts goods from the carrier.
>
> . . . . . .
>
> However this may be, in our view the question *must be* decided upon consideration of the applicable provisions of the statutes of the United States regulating interstate commerce [emphasis supplied].

Fink, 250 U.S. at 580-581.

Thus, the Court in *Fink* based its decision upon the Act, not upon the common law. In particular, the *Fink* court stated that *the Act* imposes upon an accepting consignee a promise to pay the carrier the lawful freight charges:

> For the legal charges the carrier had a lien upon the goods, and this lien could be discharged and the consignee become entitled to the goods only upon tender or payment of this rate. The transaction, in light of the act, amounted to an assumption on the part of [the consignee] to pay the only legal rate the carrier had the right to charge or the consignee the right to pay.

Fink, 250 U.S. at 582 (citation omitted).

The obligation is *not* based upon any notion of common law liability, but upon the intent of Congress that there be a uniform policy with regard to the rates charged. *Id.*[2]

In another case, this Court relieved a consignor of liability for freight charges on the ground that the consignee is always liable for freight charges on shipments that it accepts, and hence the railroad should have looked to the consignee for payment. *L & N. R. R.* v. *Central Iron Co.*, 265 U.S. 59 (1924). Although the SJC also cited *Central Iron*, it misconstrued the decision. This Court stated in *Central Iron*:

> No contract of the carrier could reduce the amount legally payable. . . . Nor could any act or omission of the carrier (except the running of the statute of limitations) estop or preclude it from enforcing payment of the full amount by a person liable therefor.

Central Iron, supra, 265 U.S. at 65.

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[2] The consignee, although he may possess the goods, is "*entitled* to the goods" only when payment is made. Therefore, a consignee who takes the goods, but repudiates the attendant obligation to pay, has engaged in conversion.

The SJC's decision in this case, however, precludes Conrail from collecting its freight charges from anyone. The consignor of the freight had signed the "nonrecourse clause" of the bills of lading, thus insulating itself from liability for the freight charges. The persons or entities to whom the shipment was sent in Rhode Island were named on the bills of lading in such a way that they, too, were insulated from liability, as more fully discussed in Section II(B) below. Hallamore was the only party to which Conrail could turn to collect its freight charges. The effect of the SJC's decision is thus to make Conrail's freight charges uncollectible, contrary to the spirit of the Interstate Commerce Act.

B. *The Facts of This Case Do Not Fall Within the Narrow Exceptions to the Statutory Rules Recognized by This Court or by Any Federal Court of Appeals.*

Further examination of the SJC's opinion reveals that this Court should grant certiorari to settle confusion which persists among lower courts concerning the scope of the Interstate Commerce Act.

The SJC placed great emphasis upon the portion of § 10744 which states that "the consignee is liable for rates billed . . . for which the consignee is otherwise liable." *Hallamore, supra,* 394 Mass. at 57, 473 N.E.2d at 1138. It then quoted from *Consolidated Freightways Corp.* v. *Admiral Corp.*, 442 F.2d 56 (7th Cir. 1971), which stated in part, "Congress left the initial determination of a party's liability for freight charges to express contractual agreement or implication of law." *Id.* at 62. In *Consolidated Freightways,* the Seventh Circuit's majority opinion (2-1) held that a consignee could raise the defense of estoppel to avoid *double* payment of the freight charges.

However, in *Southern Pac. Transp. Co.* v. *Commercial Metals*, 456 U.S. 336, 102 S.Ct. 1815 (1982), this Court severely limited the import of *Consolidated Freightways*. It characterized *Consolidated Freightways* as part of a group of cases where a carrier's own misrepresentation, coupled with concomitant detrimental reliance by a consignee, allowed the consignee to assert the affirmative defense of estoppel to avoid double payment of freight charges. The court noted that "these double payment cases constitute their own category and stand against the placement of duplication of liability upon an innocent party." *Id.*, 456 U.S. at 351, 102 S.Ct. at 1824. The *Commercial Metals* Court sternly disapproved of the broad wording of the opinion of *Consolidated Freightways*:

> Until 1971, no court seriously suggested that a violation of the credit regulations precluded a carrier from collecting a freight charge from the party with primary liability. Instead, a defense of estoppel based on a violation of the credit regulations was held to be inconsistent with the purpose of the regulations themselves.

Commercial Metals, supra, 456 U.S. at 345, 102 S.Ct. at 1821.

The Court only grudgingly acknowledged four factors that militated in favor of allowing the consignee to raise the defense of estoppel, none of which appear here. *See* 456 U.S. at 348, 102 S.Ct. at 1822. Conrail did not violate applicable regulations or misrepresent material facts to Hallamore.

In light of *Commercial Metals*, the SJC's reliance upon *Consolidated Freightways* is misplaced and reveals that lower courts require further guidance in the disposition of cases such as this one. *See Union Pacific R. Co.* v. *Riss International Corp.*, 687 P.2d 993 (Colo. App. 1984) (court followed *Consolidated Freightways*; carrier estopped from collecting charges

due to it under I.C.C. regulations); *United States* v. *Constantine*, 296 U.S. 287, 290 (1935) (certiorari advisable when lower courts exhibit pervasive confusion on point of law). This is not a case in which a carrier stands to collect double payment from a consignee. Hallamore has to date paid nothing to Conrail. Unlike Hallamore, the consignee which have managed to avoid liability have been able to do so upon an express finding that they did not accept the goods, or engage in other conduct rendering them liable for payment under the Act, as discussed in Section II below.

II. Under the Interstate Commerce Act, Hallamore Is Liable for the Freight Charges.

A. *The Interstate Commerce Act Makes a Consignee Strictly Liable for Freight Charges Unless the Consignee Gives Prior Written Notice to the Carrier that It Has No Beneficial Interest in the Freight.*

1. Courts Have Long Interpreted the Interstate Commerce Act as Imposing Strict Liability Upon Consignees.

Section 10744(a)(1) of the Act controls the fact situation of this case. The first sentence states that

> liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, *is determined under this sub-section* when the transportation is provided by a rail, motor, or water common carrier under this subtitle.

(App. 40) (emphasis supplied).

Before 1927, the fact that a consignee was not the owner of the goods and acted as an agent in accepting the shipment did not relieve him from personal liability to the carrier for unpaid charges. *New York Central and H. R. Ry. Co.* v. *York & Whitney Co.*, 256 U.S. 406 (1921), reversing in part and affirming in part 230 Mass. 206 (1918). *See also, Pittsburgh, Cincinnati, Chicago & St. Louis Ry.* v. *Fink*, 250 U.S. 577 (1919). In the *Whitney* case, an interstate shipment of perishable freight was consigned, subject to lawful charges, to a commission merchant. The commission merchant paid the charges demanded by the terminal carrier, accepted the freight, and sold it, remitting the net proceeds to the consignors. The merchant did not have possession of the bills of lading nor knowledge of their terms and conditions. By a mistake of the carrier, the charges collected were less than the lawful rates established under the Interstate Commerce Act. However, the Supreme Court held that the Commission merchant was liable for the balance, irrespective of the contract between the consignor and the shipper, and as a matter of law. *See also, Great Northern Ry. Co.* v. *Hyder*, 279 F. 783 (D.C. Wash. 1922); (no agreement between consignor and named consignee will vitiate consignee's liability for charges — even where the consignee accepted the goods because the carrier represented that the freight charges had been paid). *Union Pacific R. Co.* v. *American Smelting & Refining Co.*, 202 F. 720, 723 (8th Cir. 1912) (reason for the rule imposing strict liability upon a consignee is because the carrier delivers the goods, releasing the carrier's lien, in the faith that the consignee will pay the charges); *Western & Atlantic R. Co.* v. *Underwood*, 281 F. 891 (D. Ga. 1922). (The consignee cannot escape liability by any omission of the shipper, but must look to the shipper for recourse. The carrier is not bound by the private agreements between the shipper and consignee); *Central Iron*, 265 U.S. at

59 (no act or omission) of the carrier can estop or preclude it from collecting the charges owed).

Courts have long recognized that a carrier must be able to collect its freight charges from one party or another in order to give effect to the purpose of the Act.

> The shipper, the carrier, and the consignee are all agents and trustees for the public, and no complications arising out of the agreements between them, or shuffling, should defeat the purpose of the Act requiring the full and exact payment of the freight as fixed by the filed, posted, and published tariff.

Great Northern Ry. Co. v. *Hyder*, 279 F. 783, 786 (D.C. Wash. 1922). Hallamore has ignored Conrail's need to collect its freight charges, and has argued in the courts below that while it was the named consignee, it was not the "actual" consignee. This Court should note that a named consignor of freight recently prevailed in the Ohio courts on an analogous and equally pernicious argument. *Detroit, T. & I. Ry. Co.* v. *Maxine's Potato Service, Inc.*, 13 Ohio App. 3d 157, 468 N.E.2d 361 (1983). Lower courts that deny recovery of freight charges to carriers routinely pay lip service to the Act's purpose of preventing discrimination by carriers, but fail to recognize that their holdings open the door to *de facto* discrimination. *See, e.g., Union Pacific R. Co.* v. *Riss International Corp.*, 687 P.2d at 994. The fact patterns of such cases as *Maxine's Potato Service, supra, Riss International Corp., supra,* and now *Hallamore*, recur repeatedly in the railroad industry. Sophisticated customers can easily re-create the fact patterns to shield themselves from liability for freight charges, and railroads otherwise profitable enough to offer secret rebates to favored customers can easily collude with their favored customers in doing so.

2. The Legislative History of the Act Reveals that the Drafters Intended to Impose Strict Liability on Consignees as a General Rule.

To remedy the hardship of the basic rule that a consignee is always strictly liable for freight charges on freight that he accepts, the Interstate Commerce Act was amended by an Act of March 4, 1927, c. 510, 44 Stat. 1447. It was this amendment which inserted the written notice requirement which now appears in § 10744.[3]

The amendment sought to give the consignee a method for giving notice to the carrier that its role was merely that of an agent for transshipment and that its acceptance of the freight was not to be construed as an implied promise to pay for the charges. However, the amendment did not seek to abrogate the underlying rule that a consignee who did not give written notice would remain strictly liable for freight charges, as courts subsequently acknowledged.

The present statute, § 10744, still contains this same written notice requirement which was addressed in *Pennsylvania R. Co.* v. *Seiter*, 61 Ohio App. 497, 22 N.E.2d 843 (1939). The consignor had given a bond to guarantee payment of the freight charges and the company which ultimately received the freight paid for the charges by a check which was subsequently dishonored. Instead of looking to the consignor, the railroad sued the consignee, Seiter, who had merely re-directed the goods at a point between origin and destination.

The *Seiter* court held for the railroad, noting that the 1927 Amendment called for written notice to the railroad by a consignee who sought to avoid liability. The court emphasized (quoting from a proceeding before the Interstate Commerce

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[3] An excellent discussion of the evolution of the statute is contained in *Northwestern Pacific R.R. Co.* v. *Burchwell*, 349 F.2d 497 (5th Cir. 1965).

Commission) that the carrier is in the business of transporting freight, and it should not have to assume risks which have no direct relationship to providing transportation. 22 N.E.2d at 845. The Court went on to discuss the then recent amendment, requiring written notice of a carrier and held that if a consignee *cannot* or does not properly notify the carrier in writing, it will incur liability for the freight charges. *Id.* at 846.

While few cases have directly addressed the statute's written notice provision, one such case is *Penn Central Transp. Co.* v. *United Aero Marine Services, Inc.*, 91 Misc.2d 839, 398 N.Y.S.2d 780, 781 (1977) a case involving a carrier suing a consignor. The Court found for the consignee, based upon clearly denoted waybills that the proper notice had been given by the consignee. However, it had occasion to consider the written notice requirement when it confronted the carrier's argument that the waybills were insufficient to give the proper notice. "The manifest purpose of the statute is not only to require prior notice to the carrier but also to avoid after the fact claims by a consignee that he had orally advised the carrier that he was only an agent and lacked beneficial title." 398 N.Y.S.2d at 781. *See also, Chicago & Northwestern Transp. Co.* v. *Krohn Cartage Co.*, 79 Wis.2d 39, 255 N.W.2d 310 (1977).[4]

3. Because Hallamore "Accepted" the Freight in This Case, It is Liable for Conrail's Freight Charges.

Hallamore, as named consignee of the freight, accepted the freight involved in this case by removing it from Conrail's freight yard and transporting it to Rhode Island. In *States Marine International, Inc.* v. *Seattle-First Nat. Bank*, 524 F.2d 245 (9th Cir. 1975), the court, citing *Fink*, suggested that

[4] Hallamore relies heavily upon *Krohn Cartage*, and yet that Court held that "this section [49 U.S.C. § 3(2)] imposes strict liability upon a consignee" that fails to give the proper written notice. 255 N.W.2d at 312.

whenever a consignee of freight accepts the freight, the consignee becomes liable for the freight charges. In *States Marine*, the Seattle First National Bank had been named as consignee of a shipment of canned salmon in which it had a security interest. Because the bank was not the entity that collected the shipment on its arrival, and never took physical possession of the shipment, the court ruled that the bank had not "accepted" the shipment and accordingly relieved the bank from liability for the carrier's freight charges.

State courts presented with consignees that did accept shipments by physically removing them from freight yards have directly held that "acceptance" of the shipment renders the consignee liable for the freight charges. *Arizona Feeds* v. *Southern Pacific Trans. Co.*, 21 Ariz. App. 346, 353, 519 P.2d 199, 206 (1974); *Werner Trans. Co.* v. *Shimon*, 249 Wis. 87, 89, 23 N.W.2d 519, 520 (1946). The Supreme Court of Wisconsin has recently reaffirmed that acceptance of goods by a consignee is criterial for the consignee's liability for freight charges. In *Chicago & Northwestern Transp. Co.* v. *Krohn Cartage Co.*, 79 Wis.2d 39, 255 N.W.2d 310 (1977) a consignee received and removed part, but not all, of a freight shipment from a Milwaukee freight yard; the rest of the shipment had been unloaded and removed by someone else in Chicago. The court ruled that the railroad could collect the freight charges for the portion of the shipment delivered to the consignee Krohn in Milwaukee, but not for the portion unloaded in Chicago. This Court should note that Hallamore removed and transported to Rhode Island the entire shipment upon which Conrail seeks to collect freight charges. Hallamore's reliance on *Krohn* and the reasoning employed in that case is misplaced.

4. Hallamore Failed to Give the Requisite Written Notice to Conrail of Its Lack of Beneficial Interest in the Shipment.

Hallamore did not give the written notice to Conrail of its lack of beneficial interest in the shipment that § 10744(a) (1) requires. Hallamore claims that the wording "for transshipment to Eastern Steel Services" appearing on the bills of lading satisfied the written notice requirement. However, the bills of lading (as is often the case) were prepared by the consignor/shipper. *Hallamore* did not give notice of its status to the Railroad prior to unloading the freight as required by § 10744. Conrail's only knowledge of Hallamore's agency status was gleaned from the shipper's bill of lading. The statute's wording seeks to compel the entity accepting the freight to unequivocally state that it will not be liable for the freight charges. Bills of lading prepared by an entity other than an accepting consignee will not suffice.

B. *The SJC's Decision of This Case Has Barred Conrail from Discharging Its Duty Under the Interstate Commerce Act to Collect Its Freight Charges.*

Hallamore not only failed to notify Conrail that it was not the beneficial owner of the freight, but also failed to tell Conrail who *was* the beneficial owner of the freight, as required by 49 U.S.C. § 10744 (a) (1) (B). The Interstate Commerce Commission made the necessity of such notice clear in *Payment of Detention Charges, Eastern Central States,* 335 ICC Rep. 537 (1969), aff'd sub nom, *Middle Atlantic Conference* v. *United States,* 353 F. Supp. 1109 (D. D.C. 1972). The Interstate Commerce Commission held that a party designated on shipping documents as a "Bill To" or "On Account Of" is not a party to the shipping transaction who can incur liability for freight charges under § 10744. Thus, since the beneficial

owners of the freight in this case were named on the shipping documents only under the rubric "Bill To," Conrail cannot collect the freight charges from them.

Moreover, the consignor in this case is not liable because it duly executed the "nonrecourse clause" on the bills of lading. (SJC App. at 18, 20 (Bills of lading for shipment, in which nonrecourse clause is signed "D.L. Billings")). Consequently, if the SJC's decision stands, Conrail will be unable to collect its freight charges from anyone. Conrail has, however, a statutory duty to collect its freight charges, and may not forgive the charges under any circumstances. *See Central Iron, supra*, 265 U.S. at 70. If the SJC's decision stands, Conrail is powerless to avoid the imposition of the penalties provided for violations of the Interstate Commerce Act. *See* 49 U.S.C. §§ 11902-11904.

By deciding that Hallamore is not liable for these freight charges, the SJC has managed to overrule or completely disregard the Commerce Clause of the United States Constitution, the Intrerstate Commerce Act promulgated under it, and all of the relevant decision of the United States Supreme Court rendered in this century. The SJC 's decision impermissibly interferes with a comprehensive federal scheme for regulating interstate shipments.

Conclusion.

For all of the foregoing reasons, particularly the reason that the effect of the judgment of the Supreme Judicial Court of Massachusetts in this case would be to prevent Consolidated Rail Corporation from collecting its freight charges from any

party, in violation of the Interstate Commerce Act, this Court should grant a writ of certiorari to review the judgment of the Supreme Judicial Court of Massachusetts in this action.

Respectfully submitted,

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Appendix.

Table of Contents.

Opinion below, 394 Mass. 56 (1985)	1a
Opinion below, 473 N.E.2d 1137 (1985)	5a
Order of Boston Municipal Court	11a
Draft report of Boston Municipal Court	12a
Boston Municipal Court judgment	17a
Findings of Boston Municipal Court	18a
Boston Municipal Court Appellate Division's opinion and order (with exhibits)	19a
Denial of petition for rehearing	36a
Order of Supreme Judicial Court	37a
STATUTES.	
49 U.S.C. § 10741	38a
49 U.S.C. § 10744	40a
49 U.S.C. § 10751	43a
49 U.S.C. § 10761	44a
49 U.S.C. § 11902	45a
49 U.S.C. § 11903	45a
49 U.S.C. § 11904	46a
Complaint	50a
Answer	52a
Defendant's motion for judgment	56a
Defendant's memorandum in support of motion for judgment upon agreed statement of facts	57a
Plaintiff's motion for judgment	66a
Plaintiff's memorandum in support of motion for judgment	67a
Petition for rehearing	76a

CONSOLIDATED RAIL CORPORATION *vs.* HALLAMORE MOTOR TRANSPORTATION, INC.

Suffolk. November 8, 1984. — February 11, 1985.

Present: HENNESSEY, C.J., WILKINS, LIACOS, ABRAMS, & LYNCH, JJ.

Carrier, Liability of consignee for freight charges.

A motor common carrier was not liable under common law principles to a rail common carrier for the charges for carrying a certain shipment by rail, where the bill of lading and the waybill disclosed that the motor carrier, which unloaded the shipment and carried it to its ultimate destination, was acting as the agent of the consignee. [ ]

CIVIL ACTION commenced in the Boston Municipal Court Department on January 7, 1980.

The case was heard by *J. Peter Donovan*, J.

Zachary R. Karol for the defendant.

Michael A. Fitzhugh for the plaintiff.

WILKINS, J. The plaintiff (Conrail), a common carrier, seeks to recover charges for carrying freight by rail on two occasions from Cedar Rapids, Iowa, to Worcester, from the defendant (Hallamore), a motor common carrier, which unloaded the cargo and carried it to Quonset Point, Rhode Island. A judge of the Municipal Court of the City of Boston considered the case on a statement of agreed facts and found for Conrail. The Appellate Division agreed with the trial judge and dismissed the report to it. Judgment should have been entered for Hallamore.

We summarize the facts. Hallamore, without its authorization or knowledge (until this action was commenced), was named by someone other than Conrail as consignee of the shipments on each bill of lading and each waybill. As Conrail knew prior to delivering the cargo to Hallamore, each bill of lading and each waybill stated that the cargo was for transship-

ment to Eastern Steel Services, Inc., care of General Dynamics, Quonset Point, Rhode Island. These documents also stated that freight bills should be sent to Davis Machinery, Inc., in King of Prussia, Pennsylvania. As Conrail's field terminal supervisor in Worcester knew, Hallamore had no beneficial interest in the cargo and was acting as an agent for the sole purpose of transshipping the cargo to Rhode Island. Hallamore did not give Conrail written notice of its lack of beneficial ownership of the cargo before unloading it. Conrail did not request payment from Hallamore when Hallamore unloaded the cargo.

Hallamore's liability is to be determined by common law principles and is not governed by any provision of the Interstate Commerce Act (49 U.S.C. § 501-11917 [1982]). Conrail argues that § 10744 (a) (1) of that act, which is set forth in the margin,[1] dictates that Hallamore is liable because Hallamore did not furnish Conrail with written notice of its "agency" status and the "absence of beneficial title" before delivery of the cargo. That section provides, however, that the consignee is liable for rates billed "for which the consignee is otherwise liable." "Congress left the initial determination of a party's liability for freight charges to express contractual agreement or implication of law." *Consolidated Freightways Corp. of Del.* v. *Admiral Corp.*, 442 F.2d 56, 62 (7th Cir. 1971). See *Louisville & Nashville R.R.* v. *Central Iron & Coal Co.*, 265 U.S. 59, 69-70 (1924); *Pittsburgh, Cincinnati, Chicago & St. Louis Ry.* v. *Fink*, 250 U.S. 577, 582 (1919). In the absence

[1] Section 10744 (a) (1). "Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this subsection when the transportation is provided by a rail, motor, or water common carrier under this subtitle. When the shipper or consignor instructs the carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property —

"(A) of the agency and absence of beneficial title; and

"(B) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading."

of any other statute that imposes liability on Hallamore, our task is to determine whether, on common law principles, Hallamore is liable for the freight charges.

The question is whether a common carrier, such as Hallamore, which does not know that it has been named as a consignee of cargo and is acting only as an agent to transship that cargo to its ultimate destination, is liable for freight charges to a rail carrier, such as Conrail, which knows that its successor motor common carrier is acting only as an agent. In the absence of an express agreement binding Hallamore, its liability must be determined by considering whether liability should be implied in the circumstances. *American Ry. Express Co.* v. *Mohawk Dairy Co.*, 250 Mass. 1, 9 (1924). Acceptance of the goods by a consignee results in liability for the charges of transportation "in the ordinary case and apart from other controlling factors." *Id.* See *Pittsburgh, Cincinnati, Chicago & St. Louis Ry.* v. *Fink, supra* at 581. If a consignee, acting as an agent, redirects the goods or otherwise treats the goods as if it were the beneficial owner, the consignee may become liable for freight charges. *Pennsylvania R.R.* v. *Lord & Spencer, Inc.*, 295 Mass. 179, 184-185 (1936). See *Northwestern Pac. R.R.* v. *Burchwell Co.*, 349 F.2d 497, 501 (5th Cir. 1965); *Chicago & Northwestern Transp. Co.* v. *Krohn Cartage Co.*, 79 Wis. 2d 39, 45-46 (1977). Cf. *Pennsylvania Rd.* v. *Seiter*, 61 Ohio App. 497, 503 (1939). However, a consignment to an agent, known by the carrier to be an agent, does not make the agent liable at common law in the absence of other circumstances, such as an express or implied agreement by the consignee to pay the freight. *Boston & Me. R.R.* v. *Whitcher*, 1 Allen 497, 498 (1861). See *New York Cent. & Hudson River R.R.* v. *York & Whitney Co.*, 230 Mass. 206, 217 (1918), rev'd in part on the ground of a Federal statute, 256 U.S. 406 (1921). In *States Marine Int'l, Inc.* v. *Seattle-First Nat'l Bank*, 524 F.2d 245 (9th Cir. 1975), a bank which had a security interest in goods was named the consignee of the goods in bills of lading without its knowledge. The bank was not liable to pay shipping charges because it dealt with the goods in its capacity as a lender rather than as a beneficial owner.

Conrail had knowledge of Hallamore's agency from the bills of lading and from the waybills.[2] Those documents referred to the fact that Hallamore was consignee for transshipment to Eastern Steel Services, Inc., in Rhode Island, and that a corporation in Pennsylvania was responsible for freight charges. Under the common law, as indicated above, a consignee known to be an agent is not liable for freight charges unless there are other circumstances calling for liability. When the consignee does not even know it is named as a consignee of the goods, the case for liability is even weaker. There are no circumstances in this case for implying an obligation by Hallamore to pay the freight charges.[3]

The order dismissing the report is reversed, the finding for the plaintiff is to be vacated, and judgment is to be entered for the defendant.

So ordered.

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[2] We do not rely on the fact that Conrail's field terminal supervisor knew that Hallamore had no beneficial interest in the cargo and was acting only as an agent for its transshipment. The title of Conrail's agent suggests that it was within his authority to receive such information, thus binding Conrail. The authority of an agent is, however, a question of fact. *Baldwin's Steel Erection Co.* v. *Champy Constr. Co.*, 353 Mass. 711, 715 (1968). *Costonis* v. *Medford Hous. Auth.*, 343 Mass. 108, 113 (1961). The field terminal supervisor's authority to receive notices of agency is not established as a matter of law on the record. The shipping documents themselves disclosed Hallamore's agency status.

[3] If the requirement of written notice under 49 U.S.C. § 10744 (a) (1) were applicable to this case, contrary to our holding, Conrail's actual knowledge of Hallamore's agency status from the bills of lading and waybills might satisfy the purpose of the statute. It was so held in *Penn Cent. Transp. Co.* v. *United Aero Marine Servs., Inc.*, 91 Misc. 2d 839, 840 (N.Y. Civ. Ct. 1977) ("The carrier cannot blind itself to those writings [waybills] and insist that the writings of agency and disclaimer of title must come from the consignee"). The question whether actual notice would be a sufficient substitute for the written notice required by the Federal act was noted, but not presented on the facts, in *Chicago & Northwestern Transp. Co.* v. *Krohn Cartage Co.*, 79 Wis. 2d 39, 46 (1977).

CONSOLIDATED RAIL CORPORATION,

v.

HALLAMORE MOTOR TRANSPORTATION, INC.

Supreme Judicial Court of Massachusetts,
Suffolk.

Argued Nov. 8, 1984.

Decided Feb. 11, 1985.

Rail carrier brought action against motor common carrier seeking to recover charges for carrying freight by rail. The Municipal Court of the City of Boston, J. Peter Donovan, J., entered judgment in favor of rail carrier, and an appeal was taken. The Appeals Court dismissed report to it, and motor common carrier took a further appeal. The Supreme Judicial Court, Wilkins, J., held that motor common carrier which did not know that it had been named as a consignee of cargo and was acting only as an agent to transship that cargo to its ultimate destination was not liable for freight charges to rail carrier which knew that motor common carrier was acting only as an agent.

Reversed.

1. Carriers 194

Acceptance of goods by a consignee results in liability for charges of transportation in ordinary case and apart from other controlling factors.

2. Carriers 194

If a consignee, acting as an agent, redirects goods or otherwise treats goods as if it were beneficial owner, consignee may become liable for freight charges.

3. Carriers 194

A consignment to an agent, known by carrier to be an agent, does not make agent liable at common law in absence of other circumstances, such as express or implied agreement by consignee to pay freight.

4. Carriers 194

Motor common carrier which did not know that it had been named as a consignee of cargo and was acting only as an agent to transship that cargo to its ultimate destination was not liable for freight charges to rail carrier which knew that motor common carrier was acting only as an agent.

Zachary R. Karol, Boston, for defendant.

Michael A. Fitzhugh, Boston, for plaintiff.

Before HENNESSEY, C.J., and WILKINS, LIACOS, ABRAMS and LYNCH, JJ.

WILKINS, Justice.

The plaintiff (Conrail), a common carrier, seeks to recover charges for carrying freight by rail on two occasions from Cedar Rapids, Iowa, to Worcester, from the defendant (Hallamore), a motor common carrier, which unloaded the cargo and carried it to Quonset Point, Rhode Island. A judge of the Municipal Court of the City of Boston considered the case on a statement of agreed facts and found for Conrail. The Appellate Division agreed with the trial judge and dismissed the report to it. Judgment should have been entered for Hallamore.

We summarize the facts. Hallamore, without its authorization or knowledge (until this action was commenced), was named by someone other than Conrail as consignee of the shipments on each bill of lading and each waybill. As Conrail knew prior to delivering the cargo to Hallamore, each bill of

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Hallamore's liability is to be determined by common law principles and is not governed by any provision of the Interstate Commerce Act (49 U.S.C. § 501-11917 [1982]). Conrail argues that § 10744(a)(1) of that act, which is set forth in the margin,[1] dictates that Hallamore is liable because Hallamore did not furnish Conrail with written notice of its "agency" status and the "absence of beneficial title" before delivery of the cargo. That section provides, however, that the consignee is liable for rates billed "for which the consignee is otherwise liable." "Congress left the initial determination of a party's

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[1] Section 10744(a)(1). "Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this subsection when the transportation is provided by a rail, motor, or water common carrier under this subtitle. When the shipper or consignor instructs the carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property —

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liability for freight charges to express contractual agreement or implication of law." *Consolidated Freightways Corp. of Del. v. Admiral Corp.*, 442 F.2d 56, 62 (7th Cir. 1971). See *Louisville & Nashville R.R. v. Central Iron & Coal Co.*, 265 U.S. 59, 69-70, 44 S.Ct. 441, 443-444, 68 L.Ed. 900 (1924); *Pittsburgh, Cincinnati, Chicago & St. Louis Ry. v. Fink*, 250 U.S. 577, 582, 40 S.Ct. 27, 28, 63 L.Ed. 1151 (1919). In the absence of any other statute that imposes liability on Hallamore, our task is to determine whether, on common law principles, Hallamore is liable for the freight charges.

[1-3] The question is whether a common carrier, such as Hallamore, which does not know that it has been named as a consignee of cargo and is acting only as an agent to transship that cargo to its ultimate destination, is liable for freight charges to a rail carrier, such as Conrail, which knows that its successor motor common carrier is acting only as an agent. In the absence of an express agreement binding Hallamore, its liability must be determined by considering whether liability should be implied in the circumstances. *American Ry. Express Co. v. Mohawk Dairy Co.*, 250 Mass. 1, 9, 144 N.E. 721 (1924). Acceptance of the goods by a consignee results in liability for the charges of transportation "in the ordinary case and apart from other controlling factors." *Id.* See *Pittsburgh, Cincinnati, Chicago & St. Louis Ry. v. Fink, supra* 250 U.S. at 581, 40 S.Ct. at 27. If a consignee, acting as an agent, redirects the goods or otherwise treats the goods as if it were the beneficial owner, the consignee may become liable for freight charges. *Pennsylvania R.R. v. Lord & Spencer, Inc.*, 295 Mass. 179, 184-185, 3 N.E.2d 231 (1936). See *Northwestern Pac. R.R. v. Burchwell Co.*, 349 F.2d 497, 501 (5th Cir. 1965); *Chicago & Northwestern Transp. Co. v. Krohn Cartage Co.*, 79 Wis.2d 39, 45-46, 255 N.W.2d 310 (1977). Cf. *Pennsylvania Rd. v. Seiter*, 61 Ohio App. 497, 503, 22 N.E.2d 843 (1939). However, a consignment to an agent, known by the carrier to be an

agent, does not make the agent liable at common law in the absence of other circumstances, such as an express or implied agreement by the consignee to pay the freight. *Boston & Me. R.R. v. Whitcher*, 1 Allen 497, 498 (1861). See *New York Cent. & Hudson River R.R. v. York & Whitney Co.*, 230 Mass. 206, 217, 119 N.E. 855 (1918), rev'd in part on the ground of a Federal statute, 256 U.S. 406, 41 S.Ct. 509, 65 L.Ed. 1016 (1921). In *States Marine Int'l, Inc. v. Seattle-First Nat'l Bank*, 524 F.2d 245 (9th Cir. 1975), a bank which had a security interest in goods was named the consignee of the goods in bills of lading without its knowledge. The bank was not liable to pay shipping charges because it dealt with the goods in its capacity as a lender rather than as a beneficial owner.

[4] Conrail had knowledge of Hallamore's agency from the bills of lading and from the waybills.[2] Those documents referred to the fact that Hallamore was consignee for transshipment to Eastern Steel Services, Inc., in Rhode Island, and that a corporation in Pennsylvania was responsible for freight charges. Under the common law, as indicated above, a consignee known to be an agent is not liable for freight charges unless there are other circumstances calling for liability. When the consignee does not even know it is named as a consignee of the goods, the case for liability is even weaker. There are

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no circumstances in this case for implying an obligation by Hallamore to pay the freight charges.[3]

The order dismissing the report is reversed, the finding for the plaintiff is to be vacated, and judgment is to be entered for the defendant.

So ordered.

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[3] If the requirement of written notice under 49 U.S.C. § 10744(a)(1) were applicable to this case, contrary to our holding, Conrail's actual knowledge of Hallamore's agency status from the bills of lading and waybills might satisfy the purpose of the statute. It was so held in *Penn . . . . Cent. Transp. Co.* v. *United Aero Marine Servs., Inc.*, 91 Misc. 2d 839, 840 (N.Y. Civ. Ct. 1977) ("The carrier cannot blind itself to those writings [waybills] and insist that the writings of agency and disclaimer of title must come from the consignee"). The question whether actual notice would be a sufficient substitute for the written notice required by the Federal act was noted, but not presented on the facts, in *Chicago & Northwestern Transp. Co.* v. *Krohn Cartage Co.*, 79 Wis. 2d 39, 46 (1977).

Commonwealth of Massachusetts

TRIAL COURT OF THE COMMONWEALTH — BOSTON MUNICIPAL COURT DEPARTMENT CIVIL BUSINESS DIVISION

Suffolk, ss. Civil No. 496470

Consolidated Rail Corp.
Plaintiff

Hallamore Motor Transportation, Inc.
Defendant

ENTRY AND NOTICE OF JUDGMENT ON FINDINGS BY THE COURT (FOR CLERK'S USE ONLY)

This action came on for hearing before the Supreme Judicial Court presiding, and the issues have been duly heard.

It is ordered and adjudged:

The order dismissing the report is reversed, the finding for Consolidated Rail Corporation is vacated and judgment for Defendant(s) Hallamore Motor Transportation Inc.
The complaint of Plaintiff(s) . . . .
Is Dismissed and the Defendant . . . .
Recovers costs.
Dated at Boston, Massachusetts, this fifteenth day of March, 1985.

/s/Michael J. Coleman
Clerk/Magistrate

By /s/Neil Murphy
Assistant Clerk

Judgment entered on docket 3-15, 1985 pursuant to provisions of rule 58(a) and notice sent to parties pursuant to the provisions of rule 77(d).

COMMOWEALTH OF MASSACHUSETTS

Suffolk, SS.

TRIAL COURT
OF MASSACHUSETTS
BOSTON MUNICIPAL
COURT DEPARTMENT

Consolidated Rail Corporation,
Plaintiff

v.

CIVIL ACTION
NO. 496470

Hallamore Motor Transportation, Inc.,
Defendant

DRAFT REPORT

This is an action of contract for services rendered in which the plaintiff, Consolidated Rail Corporation, seeks to recover from the defendant, Hallamore Motor Transportation, Inc., freight charges in the amount of $9,118.57 for the transshipment of cranes and crane components in February, 1979. Plaintiff claims that the defendant is liable for the referenced charges because defendant is listed as consignee on certain waybills for said transshipments. (Plaintiff's Complaint is appended hereto as Exhibit A.)

Defendant answers admitting that it was designated as consignee on the referenced waybills but denies that it was the actual consignee. Further answering, defendant states that the plaintiff is not entitled to recover damages in any amount by reason of estoppel, waiver and the failure of consideration. (Defendant's Amended and Substituted Answer is appended hereto as Exhibit B.)

The court found for the plaintiff in the sum of $9,118.57 with interest thereon from January 7, 1980. Judgment entered

on March 7, 1983. (The Finding of the Court and Entry of Notice of Judgment are appended hereto as Exhibits C and D, respectively.)

At the trial the plaintiff and defendant each moved for judgment upon an agreed statement of facts. The plaintiff and defendant stipulated that the facts in this case are as follows:

1. The plaintiff, Consolidated Rail Corporation (hereinafter sometimes called "Conrail"), is a common carrier engaged in interstate commerce.

2. The defendant, Hallamore Motor Transportation, Inc. (hereinafter sometimes called "Hallamore"), is a motor common carrier engaged in interstate commerce.

3. The accounts sought in this action arose out of transactions engaged in interstate commerce.

4. The Waybills attached hereto as Exhibits E and F, Nos. 1617 and 1721, respectively, reflect the cargo that was shipped by Conrail and which was subsequently transshipped by Hallamore to Eastern Steel Services, Inc., Quonset Point, Rhode Island.

5. The Bills of Lading attached hereto as Exhibits G and H were issued for the cargo on February 21 and February 27, 1979, respectively.

6. The amount claimed under the two Waybills complained of is $4,544.76 and $4,573.82, respectively.

7. Hallamore did not see or receive any copies of the Bills of Lading or the Waybills numbered 1617 and 1721 until this action was commenced.

8. Those Bills of Lading and Waybills reflect that Hallamore was named as the consignee on each of them. However, Hallamore was named as consignee withouts its authorization and without its knowledge, Hallamore having had no contact or communications with Conrail concerning the Bills of Lading and Waybills until after its unloading the cargo from the rail-

road cars and its transshipment of same to Quonset Point, Rhode Island, and after Conrail sought payment for the same several months later.

9. The Bills of Lading and Waybills each state on their face that freight bills are to be sent to Davis Machinery Company and that the cargo was consigned to Hallamore for transshipment to Eastern Steel Services, Inc., c/o General Dynamics, Quonset Point, Rhode Island.

10. The Bills of Lading state "The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges."

11. To Conrail's knowledge, Hallamore was listed as consignee on the above-mentioned Waybills by a person or entity other than Hallamore or Conrail.

12. Hallamore unloaded the cargo which is the subject of the above-mentioned Waybills from Conrail's railroad cars and transshipped it to Quonset Point, Rhode Island.

13. Conrail has demanded that Hallamore pay the amounts requested in the Waybills as stated above, but Hallamore has refused to pay such sums.

14. The amounts claimed under the above-mentioned Waybills are according to tariff number TEA-FT-2010-J, Supplement 102, Item 61980-B Part 3 issued by the Interstate Commerce Commission as in effect at the time of the transport. The rate is in Supplement 122 under commodity rate column 2098.

15. Prior to delivery of the cargo to Hallamore, Conrail had received and was aware of the contents of the Bills of Lading and Waybills.

16. Hallamore did not have beneficial title to the cargo and was acting as an agent for the sole purpose of transshipping the cargo to Eastern Steel Services, Inc., Quonset Point, Rhode Island.

17. W. E. Thompson, Conrail's Field Terminal Supervisor at the Worcester yard, was aware of the facts in the foregoing Paragraph 16.

18. Without Hallamore conceding that such is necessary, Hallamore admits that it did not give Conrail written notice of its lack of beneficial ownership of the cargo prior to unloading it.

19. Prior to commencing its action against Hallamore, Conrail made demand upon Davis Machinery Company, FMC Corporation and Oxhandler Structural Enterprises Inc. for payment of the freight charges at issue herein. Conrail has not commenced suit against any of the above-named entities.

20. Conrail did not request payment at the time Hallamore unloaded the cargo.

21. After unloading the cargo, Hallamore delivered it to Eastern Steel Services at Quonset Point, Rhode Island.

22. Conrail has not been paid for the freight charges which are the subject of this action by anyone.

23. Except for any relationship between Conrail and Hallamore which may arise by operation of law based upon the facts stated herein, there was otherwise no contractual relationship between Conrail and Hallamore with respect to this transaction.

The question presented is whether or not the defendant Hallamore is liable as a matter of law upon these facts for the referenced freight charges. Plaintiff relies generally on 49 U.S.C. 1 et. seq. and more particularly on 49 U.S.C. Section 10744 of the Interstate Commerce Act in support of its claims. Defendant denies that the referenced statute imposes liability upon it in the circumstances of this case. (A copy of 49 U.S.C. section 10744 is appended hereto as Exhibit I.)

This report contains all the evidence material to the question reported.

The defendant, Hallamore Motor Transportation Inc., claiming to be aggrieved by the decision of the court, as a matter of law, I hereby report the same to the appellate division for determination.

/s/_____
J. Peter Donovan, Justice

5/3/83

Commonwealth of Massachusetts

TRIAL COURT OF THE COMMONWEALTH — BOSTON MUNICIPAL COURT DEPARTMENT CIVIL BUSINESS DIVISION

Suffolk, ss. Civil No. 496470

Consolidated Rail Corp.
Plaintiff

Hallamore Motor Transportation, Inc.
Defendant

ENTRY AND NOTICE OF JUDGMENT ON FINDINGS BY THE COURT (FOR CLERK'S USE ONLY)

This action came on for hearing before the court, Donovan, J., presiding, and the issues have been duly heard.

It is ordered and adjudged:

The Plaintiff Consolidated Rail Corporation

Recover of the Defendant Hallamore Motor Transportation

The Sum of Nine Thousand One Hundred Eighteen and 57/100

Dollars ($9,118.57), with interest thereon from January 7, 1980 . . . . as provided by law, with costs.

Dated at Boston, Massachusetts, this 7th day of March, 1983

/s/ Michael J. Coleman
Clerk/Magistrate

By /s/John K. Cavanaugh
Assistant Clerk

Judgment entered on docket March 7, 1983 pursuant to provisions of rule 58(a) and notice sent to parties pursuant to the provisions of rule 77(d).

Commonwealth of Massachusetts

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

Suffolk, ss. Civil No. 496470

Consolidated Rail Corp.
Plaintiff

Hallamore Motor Transportation, Inc.
Defendant

findings of the court

(1) The Court finds for the plaintiff

and assesses damages in the sum of $9,118.57

Entered March 7, 1983.

J. Peter Donovan
Justice

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Boston Municipal Court Department
APPELLATE DIVISION
No. 496470
Canavan, J.
Umana, J.
Tierney, J.

CONSOLIDATED RAIL CORP.

V.

HALLAMORE MOTOR TRANSPORTATION, INC.

February 3, 1984 — May 4, 1984
Opinion by Canavan, J.

This is an action of contract for services rendered in which the plaintiff, Consolidated Rail Corporation, (hereinafter called Conrail), an interstate common carrier, seeks to recover from the defendant, Hallamore Motor Transportation, Inc., (hereinafter called Hallamore), an interstate common carrier, freight charges in the amount of $9,118.57 for the transhipment of cranes and crane components in February, 1979. Conrail claims that Hallamore is liable for the charges because Hallamore is listed as consignee on certain waybills for said transhipments.

Hallamore answers admitting that it was designated as consignee on the waybills, but denies that it was the actual consignee. Further answering, Hallamore states that Conrail is not entitled to recover damages in any amount, by reason of estop-

pel, waiver and the failure of consideration. At the trial, Conrail and Hallamore each moved for judgment upon an Agreed Statement of Facts, as a "case stated". The court found for Conrail in the sum of $9,118.57.

Conrail and Hallamore stipulated that the facts in this case are as follows:

(1) The plaintiff, Consolidated Rail Corporation (hereinafter sometimes called "Conrail"), is a common carrier engaged in interstate commerce.

(2) The defendant, Hallamore Motor Transportation, Inc. (hereinafter sometimes called "Hallamore"), is a motor common carrier engaged in interstate commerce.

(3) The accounts sought in this action arose out of transactions engaged in interstate commerce.

(4) The Waybills attached hereto [the Report] as Exhibits E and F, Nos. 1617 and 1721, respectively, reflect the cargo that was shipped by Conrail and which was subsequently transhipped by Hallamore to Eastern Steel Services, Inc., Quonset Point, Rhode Island. (See App. "A" and App. "B" attached to this opinion.)

(5) The Bills of Lading attached hereto [the Report] as Exhibits G and H were issued for the cargo on February 21 and February 27, 1979, respectively. (See App. "A" and App. "B" attached to this opinion.)

(6) The amount claimed under the two waybills complained of is $4,544.76 and $4,573.82, respectively. (See App. "A" and App. "B" attached to this opinion.)

(7) Hallamore did not see or receive any copies of the Bills of Lading or the Waybills numbered 1617 and 1721 until this action was commenced.

(8) Those Bills of Lading and Waybills reflect that Hallamore was named as the consignee on each of them. However, Hallamore was named as consignee without its authorization and without its knowledge, Hallamore having had no contact or

communications with Conrail concerning the Bills of Lading and Waybills until after its unloading the cargo from the railroad cars and its transhipment of same to Quonset Point, Rhode Island, and after Conrail sought payment for the same several months later.

(9) The Bills of Lading and Waybills each state on their face that freight bills are to be sent to Davis Machinery Company and that the cargo was consigned to Hallamore for transhipment to Eastern Steel Services, Inc., c/o General Dynamics, Quonset Point, Rhode Island.

(10) The bills of lading state "The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges".

(11) To Conrail's knowledge, Hallamore was listed as consignee on the above-mentioned waybills by a person or entity other than Hallamore or Conrail.

(12) Hallamore unloaded the cargo which is the subject of the above-mentioned waybills from Conrail's railroad cars and transhipped it to Quonset Point, Rhode Island.

(13) Conrail has demanded that Hallamore pay the amounts requested in the waybills as stated above, but Hallamore has refused to pay such sums.

(14) The amounts claimed under the above-mentioned Waybills are according to tariff number TEA-FT-2010-J. Supplement 102, Item 61980-B Part 3 issued by the Interstate Commerce Commission as in effect at the time of the transport. The rate is in supplement 122 under Commodity Rate Column 2098.

(15) Prior to delivery of the cargo to Hallamore, Conrail had received and was aware of the contents of the Bills of Lading and Waybills.

(16) Hallamore did not have beneficial title to the cargo and was acting as an agent for the sole purpose of transhipping the cargo to Eastern Steel Services, Inc., Quonset Point, Rhode Island.

(17) W.E. Thompson, Conrail's Field Terminal Supervisor at the Worcester Yard, was aware of the facts in the foregoing paragraph 16.

(18) Without Hallamore conceding that such is necessary, Hallamore admits that it did not give Conrail written notice of its lack of beneficial ownership of the cargo prior to unloading it.

(19) Prior to commencing its action against Hallamore, Conrail made demand upon Davis Machinery Company, FMC., Corp. and Oxhandler Structural Enterprises, Inc., for payment of the freight charges at issue herein. Conrail had not commenced suit against any of the above-named entities.

(20) Conrail did not request payment at the time Hallamore unloaded the cargo.

(21) After unloading the cargo, Hallamore delivered it to Eastern Steel Services at Quonset Point, Rhode Island.

(22) Conrail has not been paid for the freight charges which are the subject of this action by anyone.

(23) Except for any relationship between Conrail and Hallamore which may arise by operation of law based upon the facts stated herein, there was otherwise no contractual relationship between Conrail and Hallamore with respect to this transaction.

The court found for Conrail in the sum of $9,118.57.

The sole issue in this case is whether the trial court erred in finding the defendant liable for freight charges to the plaintiff. Hallamore contends that since it was not the owner of the crane components and that it did not agree to be the consignee, it is not responsible for the payment of the tariff charges. We find no error.

The principle purpose of 49 USCS, sec. 10744[1], as well as the entire Interstate Commerce Act, unquestionably, was to eliminate all forms of rate discrimination on interstate shipments. *Roll Form Products, Inc. v. All State Trucking Co.*, 662 F 2d 150 (1981); *Southern Pacific Transportation Co. v. Campbell Soup. Co.*, 455 F 2nd 1220 (1972). The act was not intended to "fashion a sword" to insure collection by carriers of freight charges, nor do we think the act was intended to impose an absolute liability upon consignees for freight charges. Its sole purpose was to "secure quality of rates to all and to destroy favoritism". *Roll Form Products, Inc. v. All State Trucking, Inc., supra.*

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[1] 49 USCS § 10744 INTERSTATE COMMERCE

"10744. Liability For Payment Of Rates

(a)(1) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this sub-title when the transportation is provided by rail, motor, or water common carrier under this subsection. When the shipper or consignor instructs the carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property —

(A) of the agency and absence of beneficial title; and

(B) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

(2) When the consignee is liable only for rates billed at the time of delivery under paragraph (1) of this subsection, the shipper or consignor, or, if the property is reconsigned or diverted, the beneficial owner, is liable for those additional rates regardless of the bill of lading or contract under which the property was transported. The beneficial owner is liable for all rates when the property is reconsigned or diverted by an agent but is refused or abandoned at its ultimate destination if the agent gave the carrier in the reconsignment or diversion order a notice of agency and the name and address of the beneficial owner. A consignee giving the carrier, and a reconsignor or diverter giving a rail carrier, erroneous information about the identity of the beneficial owner of the property is liable for the additional rates."

We find no evidence in the record of discrimination practices and, therefore, the parties to this action were free to allocate freight charges by contract, as they wished, unaffected by 49 U.S.C.S. sec. 10744 of the Interstate Commerce Act. The trial judge was warranted in finding that there was no agreement by Hallamore to pay the freight charges because paragraph 23 of the stipulated facts states, "Except for any relationship between Conrail and Hallamore which may arise by operation of law based on the facts herein, there was otherwise no contractual relationship between Conrail and Hallamore with respect to this transaction."

The only reference to freight charges appears in paragraph (9) of the stipulated facts where it says, "The bills of lading and waybills each state on their face that freight bills are to be sent to Davis Machinery Company". There is no evidence in the record as to who Davis Machinery Company is, or that it agreed to become contractually obligated for the freight bill. The record does indicate that prior to commencing its action against Hallamore, Conrail made demand upon Davis Machinery Company, F.M.C. Corp. and Oxhandler Structural Enterprises, Inc. for payment of the freight charges, in issue herein, and that Conrail had not commenced suit against any of the above named entities.

The trial court was warranted in finding an absence of an agreement by the parties to pay for freight charges and thereby resorted to 49 USCA sec. 10744 to bind the consignee Hallamore to pay the freight charges to Conrail on goods that it accepted and took away.[2]

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[2] Section 10744 codifies the now repealed 49 U.S.C. secs. 3(2) and 323. In codifying these sections, as well as the entire Interstate Commerce Act, Congress made clear that

Like other codifications undertaken to enact into positive law all titles of the United States Code, this bill makes no substantive change in the law. It is

The law pertaining to the payment of freight charges by a common carrier engaged in interstate commerce has long been settled. Once a party who is named as consignee on a waybill receives the cargo that has been transported by common carrier, that party is responsible for the payment of the freight charges. The consignee is entitled to merchandise only upon payment of transportation charges, and once the merchandise is taken, the obligation to pay is vested. *Pittsburg, Cincinnati, Chicago and St. Louis R. Co. v. Fink*, 250 U.S. 577, 40 S. Ct. 27 (1919).

When goods are shipped interstate by common carrier, the freight rate is determined by the tariff filed with the Interstate Commerce Commission. The legal amount of the freight charges owed to the common carrier is then deducted through the application of the tariff rate to the actual weight of the goods shipped. In this manner, freight costs are set by law; therefore, no contract nor any act short of running of the statute of limitations can prevent the carrier from enforcing the freight services rendered. *Louisville v. Nashville Railroad Company v. Central Iron & Coal Company*, 265 U.S. 59, 65 (1923); *Southern Pacific Transportation Company v. Commercial Metals*, 102 S. Ct. 1815-1820 (1982).

If a shipment is accepted, the consignee becomes liable for freight charges, whether they are demanded at the time of delivery or thereafter. *Fink, supra*; *Southern Pacific Co. v. Wheaton Brass Works*, 5 N.J. 394 (1950).

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sometimes feared that mere changes in terminology and style will result in changes in substance or impair the precedent value of earlier judicial decisions and other interpretations. This fear might have some weight if this were the usual kind of amendatory legislation where it can be inferred that a change of language is intended to change substance. In a codification statute, however, the courts uphold the contrary presumption: the statute is intended to remain substantively unchanged. H.R. Rep. No. 13905, 95th Cong., 2nd Sess. 9 (1978), Reprinted in [1978]

All parties to domestic interstate shipment contracts are presumed to know the law. *Pittsburg, Cincinnati, Chicago & St. Louis Railway Company v. Fink, supra.*

In *Great Northern Railway Co. v. Hyder,* 279 F. 783 (1922), the issue presented for determination was whether a consignee, who is not at any time the owner of the goods shipped, who has not agreed with either the shipper or the carrier that he will pay the freight, who accepts the goods upon the carrier's representation that the freight has been prepaid, can be bound by such acceptance to pay the freight. The court decided that it could, reasoning that estoppel should not apply since "the shipper, the carrier, and consignee are all agents and trustees for the public, and no complications arising out of the agreements between them, or shuffling, should defeat the purpose of the act requiring full and exact payment of the freight as fixed by the filed, posted and published tariff."

In *Western Atlantic R. Co. v. Underwood,* 281 F. 891 (D.C. N.D. Ga. (1922) the court found that "the consignee cannot accept delivery without incurring liability for the carrier's charges, known or unknown, supposed to be prepaid or otherwise, and no matter what the consignee's actual relation to the shipper is." The court went on to say that if the consignee was thus made liable for a charge which he should not bear, his recourse is on the shipper. The carrier was not bound by the private rights of the parties to the transportation, whether known or unknown to it, and could look for payment to the shipper or the consignee, who upon acceptance of the goods becomes statutorily liable to discharge the carrier's lien thereon. Also see *Southern Pacific Company v. Miller Abattoir Company,* 454 F. 2nd 357 (3rd Cir. 1972).

Hallamore seeks to avoid any liability for the freight charges by claiming that it had no knowledge of the fact that it was a consignee and that Conrail knew it had no beneficial interest in the cargo it was handling. Here, Hallamore itself is a com-

mon carrier engaged in interstate commerce; the charges sought arose out of transactions engaged in interstate commerce; Hallamore is aware of the methods by which freight charges and the collection thereof are handled; it was Hallamore's obligation to see to it that the ultimate recipient of the goods shipped pays all freight charges prior to releasing that cargo to the entity ultimately taking title to it.

When Hallamore, as designated consignee, unloaded the cargo from Conrail and transhipped it to Eastern Steel Services, Inc., Quonset Point, R.I., it became liable to Conrail for freight charges under the Interstate Commerce Act irrespective of the fact that it did not receive copies of the bills of lading or waybills until this action was commenced, or that it had no knowledge that it was a consignee.

Hallamore did not have beneficial title to the cargo and was acting as an agent for the sole purpose of transhipping the cargo to Eastern Steel Services, Inc. Here Conrail is only seeking freight charges for delivery of the cargo it carried to Worcester, Massachusetts, in the sum of $9,118.57 and not for additional rates that may be found to be due, after delivery to Hallamore, for transhipment of the cargo to Eastern Steel Services, Inc., Quonset Point, Rhode Island.

Judgment affirmed.

Report dismissed.

/s/ Harold Canavan

/s/ Maur Umana

/s/ William J. Tierney

BEST AVAILABLE COPY

APPENDIX "A" 00143

WIDE LOAD

EXTREME DIMENSIONS

Cedar Rapids and Iowa City Railway Company - 111

Freight Waybill

To Be Used For Single Consignments, Carload and Less Carload

Stop This Car at / See Attachment For / For	WEIGHT IN TONS Gross	Tare	Net	LENGTH OF CAR Ordered	Furnished	MARKED CAPACITY OF CAR Ordered	Furnished
				Car Shipment			

Car Initials and Number	KIND	C.L. Transferred to or L.C.L LOading No.	DATE	WAYBILL NO.
NTTX 97665	F		2 21 79	1617

TO STATION	STATE	FORM NO. STATION	STATE
WORCESTER, MASS. H 327		6 Crandic, Iowa	
19111 Worcester	MA	B/A 5 Cedar Rapids, Iowa	

Route - show each junction and carrier ir route order to destination of waybill	Show "A" if Agent's Routing or "s" if Shipper's Routing.	Full Name of Shipper and, for C.O.D. Shipments, the Street and Post Office Address, and Invoice Number if available
CRs IC IOWA CRI&P CONRAIL SO. CHICAGO 302	S	FMC CORP. SHIPPERS NO. W79-653 AGENTS NO. 5628

Reconsigned To Station State	Origin and Date, Original Car, Transfer Freight Bill and Previous Waybill Reference and Routing When Rebilled
Authority	013272-11

Consignee and Address	AMOUNT	WEIGHED
HALLAMORE MOTOR TRANSPORTATION c/o CONRAIL PUBLIC SIDING FRANKLIN STREET,	C. $ _____	At 5 CEDAR RAPIDS, IOWA
	O. $ _____	Gross 194,360

Final Destination and Additional Routing

28a

WORCESTER, MASS.

D.$ - - - - - - - -

Tare 57,900

When Shipper in the United States executes the no-recourse clause of Section 7 of the Bill of Lading Insert "Yes"

YES

Pickup Service

YES NO

Allowance 12,000

Net 134,460

Indicate by symbol in column provided * how weights are obtained for L.C.L. shipments only. R - Railroad scales. S - Shipper's Tested Weights. E- Estimated - Weight and Correct. T - Tariff Classification or Minimum.

Delivery Service Requested

YES NO

If Charges are to be Prepaid, write or stamp here "TO BE PREPAID"

On C.L. TRAFFIC - INSTRUCTIONS (Regarding Icing, Ventilation, Milling, Weighing, Etc. If Iced, Specify to Whom Icing Should be Charged)

SEND FREIGHT BILL TO: DAVIS MACHINERY, INC.
P. O. BOX 246
KING OF PRUSSIA, PA 19406

STCC 35 314 10

On L.C.L. Traffic, Transfer Stamps to Be Shown In This Space (Assigned Car. When Empty, Bill Back to Agent -

CR&IC RY. AT IOWA CITY, IOWA VIA REVERSE OF LOADED MOVEMENT)

No. Pkgs.	Description of Articles, Special Marks and Exceptions *	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
1	Model LS718 Lifting Crane Upper Works					
1	Car Body, Crane SL&C	134,460	3.38	4544.75	Collect	
	For Transhipment to: Eastern Steel Services Co. c/o General Dynamics Quonset Point, R. R.					

Destination Agent's Freight Bill No.

Outboard Jct. Agent Will Show Jct stamps in space and order provided. Additional Jct. Stamps and all Yard Stamps to be replaced on back hereof.

FIRST JUNCTION	SECOND JUNCTION	THIRD JUNCTION	FOURTH JUNCTION	Destination Agent will stamp herein station name card date reported

111 - CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY - 111

29a

Comp'y Agent's No. 5720 1617

000.0

FEB 21 19 79

...and Excavator Co. ...

...at Parent gold order except as noted (contents and condition of contents of packages unknown) marked consigned and destined as shown below, ... being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to ... said destination, if on its own road or its own water line or highway route or within the territory of its highway operations, or otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on the back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to ...LAND PORT TRANSPORTATION c/o CONRAIL PUBLIC SIDING

Destination ... Street ... FRANKLIN STREET

County ... State ...ESS Zip ...

Routing ...CONRAIL

Delivering Carrier CONRAIL Vehicle or Car Initial ...NTTX No 97665

Collect On Delivery $ ... Remit to:

Street ... City ... State

C O D. charge to be paid by } Shipper ☐ Consignee ☐

No. Packages	Kind of Package, Description of Articles, Special Marks, and Exceptions	Weight (Subject to Correction)	Class or Rate	Check Column
1	Model LS718 x lifting crane upper works	94,360 57,900		
1	carriage, crane	36,440		

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

CRIC
CRIP E 386-3
Conrail BX 4077

30a

BEST AVAILABLE COPY

carload, crane dunnage 2000

SLSC
SEND FREIGHT BILL TO 4.23
DAVIS MACHINERY INC
PO BOX 246
KING OF PRUSSIA PA 19406

FOR TRANSSHIPMENT TO:

EASTERN STEEL SERVICE INC
C/O GENERAL DYNAMICS
QUONSET POINT, R.I.

134,460 = 5687.66

D I. BILLINGS
(Signature of consignor)

If charges are to be prepaid write or stamp here "To be Prepaid".

SEE BILL TO

Received $ ..... to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per .....
(The signature here acknowledges only the amount prepaid)

C.R. & I.C. RY. CO.
RECEIVED
FEB 22 1979

If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight.

Note — Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding ..... per .....

Shipper

Per .....

Permanent post-office address of shipper— Cedar Rapids, Iowa 52406

(2)

Agent must detach and must sign the

CEDAR RAPIDS, IOWA

Ex B1

31a

BEST AVAILABLE COPY

PENDIX "B"

WIDE LOAD

EXTREME DIMENSIONS

Cedar Rapids and Iowa City Railway Company - 111
FREIGHT WAYBILL

To Be Used For Single Consignments, Carload and Less Carload

Stop This Car at / See Attachment For / For	WEIGHT IN TONS Gross	Tare	Net	LENGTH OF CAR Ordered	Furnished	MARKED CAPACITY OF CAR Ordered	Furnished

Car Initials and Number	KIND	C.L. Transferred to or L.C.L LOading No.	DATE	WAYBILL NO.
MTTX 97665	F		B/L 2 27 79	1 - 1721

TO STATION	STATE	FORM NO. STATION	STATE
WORCESTER, MASS. 19111 Worcester	7705	6 Crandic, Iowa B/A 5 Cedar Rapids, Iowa	

Route - show each junction and carrier in route order to destination of waybill	Show "A" if Agent's Routing or "s" if Shipper's Routing.	Full Name of Shipper and, for C.O.D. Shipments, the Street and Post Office Address, and Invoice Number if available
CR& IC IOWA CONRAIL CONRAIL DELV. City Center, So. Chicago	S	FMC CORP. SHIPPERS NO. W79-654 AGENTS NO. 5617

Reconsigned To Station State	Origin and Date, Original Car, Transfer Freight Bill and Previous Waybill Reference and Routing When Rebilled
Authority	

Consignee and Address	AMOUNT	WEIGHED
HALLANDRE MOTOR TRANSPORTATION c/o CONRAIL PUBLIC SIDING FRANKLIN STREET,	C. $ - - - - - - - -	At 5 CEDAR RAPIDS, IOWA
	O. $ - - - - - - - -	Gross 195,220
Final Destination and Additional Routing WORCESTER, MASS.	D. $ - - - - - - - -	Tare 57,930

32a

When Shipper in the United States executes the no-recourse clause of Section 7 of the Bill of Lading Insert "Yes"

YES

Pickup Service

YES NO

Allowance 2,000

Net 35,320

Indicate by symbol in column provided - how weights are obtained for L.C.L. shipments only. R - Railroad scales. S - Shipper's Tested Weights. E- Estimated - Weight and Correct. T - Tariff Classification or Minimum.

Delivery Service Requested

YES NO

If Charges are to be Prepaid, write or stamp here "TO BE PREPAID"

On C.L. TRAFFIC - INSTRUCTIONS (Regarding Icing, Ventilation, Milling, Weighing, Etc. If Iced, Specify to Whom Icing Should be Charged)

DESTINATION AGENT SEND FREIGHT BILL TO: DAVIS MACHINERY COMPANY
"ASSIGNED CAR, WHEN NEXT EMPTY BILL P. O. BOX 246
BACK TO AGENT, CR & IC RY. AT IOWA CITY KING OF PRUSSIA, PA 19406
IOWA VIA REVERSE ROUTE

STCC 35 314 50

On L.C.L. Traffic, Transfer Stamps to Be Shown In This Space

No. Pkgs.	Description of Articles, Special Marks and Exceptions	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
1	Model LS71 Lifting Crane Upper Works					
1	Car Body, Crane SL&C	135,320	3.38	4573.82	Collect	
	For Transhipment to: Eastern Steel Services c/o General Dynamics Quonset Point, Rhode Island					

Destination Agent's Freight Bill No.

Outboard Jct. Agent Will Show Jct stamps in space and order provided. Additional Jct. Stamps and all Yard Stamps to be replaced on back hereof.

FIRST JUNCTION	SECOND JUNCTION	THIRD JUNCTION	FOURTH JUNCTION	Destination Agent will stamp herein station name card and date reporte

33a

...ORDER MUST BE NEATLY FILLED IN, IN INK, OR INDELIBLE PENCIL, OR IN CARBON, AND RETAINED BY THE AGENT. ... 1721

...Bumpers, Ag. ...

...and tariffs in effect on the date of the issue of this bill of lading.

...Corporation
...and Excavator Division
...Rapids Iowa 52406

34a
36

FEB 27 19 ...

...order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as shown below, ...being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to ... at said destination, if on its own railroad, water line, highway route or routes, or within the territory of its highway operations, otherwise to deliver ... corporation. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to ... of all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed ... the conditions on the back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

...ATLANTIC TRANSPORTATION c/o CONRAIL PUBLIC SIDING

Street ... Franklin Street

...Lancaster Lake County ... State PENN Zip ...

...Delivering Carrier ... Vehicle or Car Initial ... No. 97163

...ect On Delivery $ ... Send Consist to: CRIC CRIP Enid 386-3 Conrail BX 4077

Street ... City ... State

C O D charge to be paid by { Shipper ☐ Consignee ☐

No. Packages	Kind of Package, Description of Articles, Special Marks, and Exceptions	Weight (Subject to Correction)	Class or Rate	Check Column
	Model LL710 lifting crane ... 145,220 ...rtbody, crane 57,900 203,120			

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other

BEST AVAILABLE COPY

DLLC

FREIGHT BILL TO:
DAVIS MACHINERY COMPANY
PO BOX 240
KING OF PRUSSIA PA 19406

FOR TRANSSHIPMENT TO
BRITISH STEEL SERVICES INC
c/o GENERAL DYNAMICS
QUONSET POINT RI

4-29 135,320 = 5724.84

D BILLINGS
(Signature of consignor)

If charges are to be prepaid write or stamp here "To be Prepaid".

COLLECT

Received $
to apply in prepayment of the charges on the property described hereon

Agent or Cashier

Per
(The signature here acknowledges only the amount prepaid)

C.R. & I.C. RY. CO.
RECEIVED
FEB 27 1979

If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight.

Note — Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding per

Shipper
Excavator Division

per

(2)

Agent must sign here if signing for a Carrier and must be CEDAR RAPIDS, IOWA Agent

Permanent post-office address of shipper— Cedar Rapids, Iowa 52406

E+B2

80118

35a

SUPREME JUDICIAL COURT FOR
THE COMMONWEALTH

ROOM 1412 COURT HOUSE
BOSTON, MASSACHUSETTS 02108
(617) 725-8055

JEAN M. KENNETT
Clerk

FREDERICK J. QUINLAN
Assistant Clerk

Received Feb 28 1985

February 27, 1985

Michael A. Fitzhugh, Esq.
Fitzhugh & Ward
111 State Street
Boston, MA 02109

Dear Mr. Fitzhugh: Re: Consolidated Rail Corporation
vs. Hallamore Motor Transportation, Inc.
Supreme Judicial Court No. SJC-3555

Your Petition for Rehearing in the above captioned appeal has been considered by the court and is denied.

Very truly yours,

/s/ Jean M. Kennett
Clerk

c.c.: Zachary R. Karol, Esq.
Bingham, Dana & Gould
100 Federal St., Boston 02110

PLEASE ADDRESS ALL CORRESPONDENCE TO CLERK

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH,

At Boston, February 11, 1985.

IN THE CASE NO. SJC-3555

CONSOLIDATED RAIL CORPORATION

vs.

HALLAMORE MOTOR TRANSPORTATION, INC.
pending in the District Court Department of the Trial Court for the County of Suffolk, Boston Municipal Court Department, No. 496470

ORDERED, that the following entry be made in the docket; viz., —

The order dismissing the report is reversed, the finding for Consolidated Rail Corporation is to be vacated, and judgment is to be entered for Hallamore Motor Transportation, Inc.

BY THE COURT,
/s/ Jean M. Kennett, CLERK.

February 11, 1985
See opinion on file.

49 U.S.C. § 10741. Prohibitions against discrimination by common carriers

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may not charge or receive from a person a different compensation (by using a special rate, rebate, drawback, or another means) for a service rendered, or to be rendered, in transportation the carrier may perform under this subtitle than it charges or receives from another person for performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances. A common carrier that charges or receives such a different compensation for that service unreasonably discriminates.

(b) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title may not subject a person, place, port, or type of traffic to unreasonable discrimination. However, subject to subsection (c) of this section, this subsection does not apply to discrimination against the traffic of another carrier providing transportation by any mode.

(c) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter may not subject a freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of that chapter to unreasonable discrimination whether or not the freight forwarder is controlled by that carrier.

(d) Differences between the rates, classifications, rules, and practices of water and rail common carriers in effect for their respective types of transportation do not constitute a violation of this section or an unfair or destructive competitive practice under this subtitle.

(e) Differences between rates, classifications, rules, and practices of rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title do not constitute a violation of this section if such differences result from different services provided by rail carriers.

(f) This section shall not apply to—

(1) contracts approved under section 10713 of this title, other than as provided in subsection (d)(2)(A)(ii) and (d)(2)(B) of such section;

(2) surcharges or cancellations under section 10705a of this title;

(3) separate rates for distinct rail services under section 10728 of this title;

(4) rail rates applicable to different routes; or

(5) expenses authorized under section 10751 of this title,

except that with respect to rates described in paragraphs (2), (3), and (4), nothing in this subsection shall affect the authority of the Commission under this section with respect to rate relationships between ports or within the same port.

. . . . . .

49 U.S.C. § 10744. Liability for payment of rates

(a)(1) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this subsection when the transportation is provided by a rail, motor, or water common carrier under this subtitle. When the shipper or consignor instructs the carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but nor for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property —

> (A) of the agency and absence of beneficial title; and
> (B) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

(2) When the consignee is liable only for rates billed at the time of delivery under paragraph (1) of this subsection, the shipper or consignor, or, if the property is reconsigned or diverted, the beneficial owner, is liable for those additional rates regardless of the bill of lading or contract under which the property was transported. The beneficial owner is liable for all rates when the property is reconsigned or diverted by an agent but is refused or abandoned at its ultimate destination if the agent gave the carrier in the reconsignment or diversion order a notice of agency and the name and address of the beneficial owner. A consignee giving the carrier, and a reconsignor or diverter giving a rail carrier, erroneous information about the identity of the beneficial owner of the property is liable for the additional rates.

(b) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor, named in the bill of lading as consignee, is determined under this subsection when the transportation is provided by a rail or express carrier under this subtitle. When the shipper or consignor gives written notice, before delivery of the property, to the line-haul carrier that is to make ultimate delivery-

> (1) to deliver the property to another party identified by the shipper or consignor as the beneficial owner of the property; and
> (2) that delivery is to be made to that party on payment of all applicable transportation rates;

that party is liable for the rates billed at the time of delivery and for additional rates that may be found to be due after delivery if that party does not pay the rates required to be paid under clause (2) of this subsection on delivery. However, if the party gives written notice to the delivering carrier before delivery that the party is not the beneficial owner of the property and gives the carrier the name and address of the beneficial owner, then the party is not liable for those additional rates. A shipper, consignor, or party to whom delivery is made that gives the delivering carrier erroneous information about the identity of the beneficial owner, is liable for the additional rates regardless of the bill of lading or contract under which the property was transported. This subsection does not apply to a prepaid shipment of property.

(c)(1) A rail carrier may bring an action to enforce liability under subsection (a) of this section. That carrier must bring the action during the period provided in section 11706(a) of this title [49 USCS § 11706(a)] or by the end of the 6th month after final judgment against it in an action against the con-

signee, or the beneficial owner named by the consignee or agent, under that section.

(2) A water common carrier may bring an action to enforce liability under subsection (a) of this section. That carrier must bring the action by the end of the 2d year after the claim accrues or by end of the 6th month after final judgment against it in an action against the consignee or beneficial owner named by the consignee by the end of that 2-year period.

(3) A rail or express carrier may bring an action to enforce liability under subsection (b) of this section. That carrier must bring the action during the period provided in section 11706(a) of this title [49 USCS § 11706(a)] or by the end of the 6th month after final judgment against it in an action against the shipper, consignor, or other party under that section.

49 U.S.C. § 10751. Business entertainment expenses

(a) Any business entertainment expense incurred by a person providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title shall not constitute a violation of section 10741 or 10761 of this title if such expense would not be unlawful if incurred by a person or corporation not subject to such jurisdiction of the Commission.

(b) Any business entertainment expense authorized under this section that is paid or incurred by a person providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title shall not be taken into account in determining the cost of service or the rate base for purposes of this title.

(c) Within 180 days after the date of enactment of the Motor Carrier Act of 1980, the Commission shall institute a rulemaking proceeding pursuant to which it shall issue rules establishing appropriate standards and guidelines for authorized business entertainment expenses under this section. Such standards and guidelines shall be consistent with standards and guidelines applicable under existing law to persons not subject to this subtitle, including competing unregulated surface transportation carriers.

49 U.S.C. § 10761. Transportation prohibited without tariff

(a) Except as provided in this subtitle, a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall provide that transportation or service only if the rate for the transportation or service is contained in a tariff that is in effect under this subchapter. That carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

(b) The Commission may grant relief from subsection (a) of this section to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on application of a contract carrier or group of contract carriers and on its own initiative for a water contract carrier or group of water contract carriers.

(c) This section shall not apply to expenses authorized under section 10751 of this title.

49 U.S.C. § 11902. Civil penalty for accepting rebates from common carrier

A person (1) delivering property to a common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title [49 USCS §§ 10501 et seq.] for transportation under this subtitle or for whom that carrier will transport the property as consignor or consignee for that person from a State or territory or possession of the United States to another State or possession, territory, or to a foreign country, and (2) knowingly accepting or receiving by any means a rebate or offset against the rate for transportation for, or service of, that property contained in a tariff filed with the Commission under subchapter IV of chapter 107 of this title [49 USCS §§ 10761 et seq.], is liable to the United States Government for a civil penalty in an amount equal to 3 times the amount of money that person accepted or received as a rebate or offset and 3 times the value of other consideration accepted or received as a rebate or offset. In a civil action under this section, all money or other consideration received by the person during a period of 6 years before an action is brought under this section may be included in determining the amount of the penalty, and if that total amount is included, the penalty shall be 3 times that total amount.

49 U.S.C. § 11903. Rate, discrimination, and tariff violations

(a) A person that knowingly offers, grants, gives, solicits, accepts, or receives by any means transportation or service provided for property by a common carrier subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title [49 USCS §§ 10501 et seq.] (1) at less than the rate in effect under chapter 107 of this title [49 USCS §§ 10701

et seq.], or (2) by practicing discrimination, shall be fined at least $1,000 but not more than $20,000, imprisoned for not more than 2 years, or both.

(b) A carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title [49 USCS §§ 10501 et seq.] or an officer, director, receiver, trustee, lessee, agent, or employee of a corporation that is subject to the jurisdiction of the Commission under that chapter, that willfully does not file and publish its rates or tariffs as required under chapter 107 of this title [49 USCS §§ 10701 et seq.] or observe those tariffs until changed under law, shall be fined at least $1,000 but not more than $20,000, imprisoned for not more than 2 years, or both.

(c) When acting in the scope of their employment, the actions and omissions of persons acting for or employed by a carrier or shipper that is subject to subsection (a) or (b) of this section are considered to be the actions and omissions of that carrier or shipper as well as that person.

(d) Trial in a criminal action under this section is in the judicial district in which any part of the violation is committed or through which the transportation is conducted.

49 U.S.C. § 11904. Additional rate and discrimination violations

(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title [49 USCS §§ 10501 et seq.], and when that carrier is a corporation, an officer, employee, or agent of the corporation, that by any means knowingly and willfully assists a person in getting, or willingly

permits a person to get, transportation provided under this subtitle for property at less than the rate in effect for that transportation under chapter 107 of this title [49 USCS §§ 10701 et seq.], shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

(2) A person, or officer or agent of the person, that (A) delivers property for transportation under this subtitle to a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title [49 USCS §§ 10501 et seq.], or for whom that carrier transports property as consignor or consignee, and (B) knowingly and willfully by any means gets or attempts to get that property transported at less than the rate in effect for that transportation under chapter 107 of this title [49 USCS §§ 10701 et seq.], shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

(3) A person, or an officer or agent of a corporation or company that by payment of anything of value, solicitation, or in any other way, induces or attempts to induce a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title [49 USCS §§ 10501 et seq.], or any of its officers or agents, to discriminate unreasonably against another consignor or consignee in the transportation of property shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

(b) A person, or an officer, employee, or agent of that person, that (1) knowingly offers, grants, gives, solicits, accepts, or receives a rebate, concession, or discrimination in violation of a provision of this subtitle related to motor carrier transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title [49 USCS §§ 10521

et seq.], or (2) by any means knowingly and willfully assists or permits another person to get transportation that is subject to the jurisdiction of the Commission under that subchapter at less than the rate in effect for that transportation under chapter 107 of this title [49 USCS §§ 10701 et seq.], shall be fined at least $200 but no more than $500 for the first violation and at least $250 but not more than $2,000 for a subsequent violation.

(c)(1) A water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title [49 USCS §§ 10541 et seq.], or an officer, agent, or employee of that carrier, that knowingly and willfully by any means offers, grants, or gives, or intentionally permits a person to get, transportation provided under that subchapter at less than the rate in effect for that transportation under chapter 107 of this title [49 USCS §§ 10701 et seq.], shall be fined not more than $5,000.

(2) A person that knowingly and willfully by any means solicits, accepts, or receives transportation provided under subchapter III of chapter 105 of this title [49 USCS §§ 10541 et seq.] at less than the rate in effect for that transportation under chapter 107 of this title [49 USCS §§ 10701 et seq.], shall be fined not more than $5,000.

(3) Trial in a criminal action under this subsection is in the judicial district in which any part of the violation is committed.

(d)(1) A freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter

105 of this title [49 USCS §§ 10561 et seq.], or an officer, agent, or employee of that freight forwarder, that knowingly and willfully assists a person in getting, or willingly permits a person to get, service provided under that subchapter at less than the rate in effect for that service under chapter 107 of this title [49 USCS §§ 10701 et seq.], shall be fined not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

(2) A person that knowingly and willfully by any means gets, or attempts to get, service provided under subchapter IV of chapter 105 of this title [49 USCS §§ 10561 et seq.] at less than the rate in effect for that service under chapter 107 of this title [49 USCS §§ 10701 et seq.], shall be fined not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

Municipal Court
of the City of Boston
Civil Action No.
496470

CONSOLIDATED RAIL CORPORATION,
Plaintiff

v.

COMPLAINT

HALLAMORE MOTOR TRANSPORTATION,
Defendant

1. Plaintiff, Consolidated Rail Corporation (hereinafter sometimes referred to as "Conrail") is a common carrier by railroad formed under the Regional Rail Reorganization Act of 1973, 45 U.S.C., Section 741. Conrail is authorized to operate as a common carrier within the Commonwealth of Massachusetts, and located at 1138 Six Penn Center, Philadelphia, Pennsylvania.

2. Defendant, Hallamore Motor Transportation (hereinafter sometimes referred to as "Hallamore") is a transportation company located at 203 Washington Street, Auburn, Massachusetts.

3. Defendant Hallamore is the consignee listed on Conrail waybill number 1617, dated February 21, 1979, for the transhipment of one model LS718 Lifting Crane upper works, and one car body, crane, said transhipment valued at $4,544.75, collect. A copy of said waybill is annexed hereto as Exhibit "A".

4. Defendant Hallamore is a consignee listed on Conrail waybill number 1721, dated February 27, 1979, for the transhipment of one model LS718 Lifting Crane, and one car body, crane, said transhipment is valued at $4,573.82, collect. A copy of said waybill is annexed hereto as Exhibit "B".

5. Plaintiff Conrail sought collection from defendant Hallamore of the above described waybills on or about August 9, 1979. A copy of said Conrail collection letter to Hallamore is annexed hereto as Exhibit "C".

6. The defendant owes the plaintiff a total of $9,118.57 for said transhipments, which sum defendant has failed, or refused to pay to the plaintiff.

WHEREFORE, the plaintiff demands:

1. Judgment against the defendant in the amount of $9,118.57.

2. Plaintiff's costs in this action, including reasonable attorneys' fees and such other relief as justice may require.

By its attorney,

/s/ _____

Theodore C. Landsmark
ATKINS & BROWN
Ten Post Office Square
Boston, Massachusetts 02109
(617) 482-5156

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

TRIAL COURT OF
MASSACHUSETTS BOSTON
MUNICIPAL COURT DEPARTMENT

CONSOLIDATED RAIL CORPORATION,
Plaintiff

v.

CIVIL ACTION
NO. 496470

HALLAMORE MOTOR TRANSPORTATION, INC.
Defendant

AMENDED AND SUBSTITUTED ANSWER

Now comes the defendant, Hallamore Motor Transportation, Inc. and for its amended answer to plaintiff's Complaint states as follows:

1. The defendant admits the allegations contained in Paragraph 1 of plaintiff's Complaint.

2. The defendant admits the allegations contained in Paragraph 2 of plaintiff's Complaint. Further answering Paragraph 2, the defendant states that it is a Massachusetts corporation engaged in the business of transportation of goods by truck; that it maintains corporate headquarters at 795 Plymouth Street, Holbrook, Massachusetts and a transportation terminal at 203 Washington Street, Auburn, Massachusetts; and, that it is a licensed common carrier.

3. In answering Paragraph 3 of plaintiff's Complaint, the defendant admits that it was designated as "consignee" on Conrail waybill number 1617 but denies that it was the actual consignee. Further answering Paragraph 3, the

defendant states that the referenced waybill speaks for itself and the defendant denies any allegations contained in Paragraph 3 of plaintiff's Complaint inconsistent therewith.

4. In answering Paragraph 4 of plaintiff's Complaint, the defendant admits that it was designated as "consignee" on Conrail waybill number 1721 but denies that it was the actual consignee. Further answering Paragraph 4, the defendant states that the referenced waybill speaks for itself and the defendant denies any allegations contained in paragraph 4 of plaintiff's Complaint inconsistent therewith.

5. In answering Paragraph 5 of plaintiff's Complaint, the defendant states that the referenced letter speaks for itself and the defendant denies any allegations contained in Paragraph 5 of plaintiff's Complaint inconsistent therewith.

6. The defendant admits that it has refused to make payment in any amount to the plaintiff. The defendant denies the remaining allegations of Paragraph 6 of plaintiff's Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The plaintiff is not entitled to recover damages in any amount by reason of estoppel.

THIRD AFFIRMATIVE DEFENSE

The plaintiff is not entitled to recover damages in any amount by reason of the failure of consideration.

FOURTH AFFIRMATIVE DEFENSE

The plaintiff is not entitled to recover damages in any amount by reason of waiver.

CERTIFICATE OF SERVICE

I, James E. O'Connell, Jr., attorney for the defendant, hereby certify that on February 3, 1983, I served a copy of the within Amended and Substituted Answer, by hand-delivering a copy thereof to Peter L. Brown, Esq., of Atkins & Brown, 10 Post Office Square, Boston, MA 02109.

/s/ _____
James E. O'Connell, Jr.

WHEREFORE, the defendant Hallamore Motor Transportation, Inc. prays that the Complaint be dismissed in its entirety with costs adjudged against the plaintiff and this Court order such other relief as it deems just and proper.

By its attorneys,

/s/ _____

Zachary R. Karol
James E. O'Connell, Jr.
BINGHAM, DANA & GOULD
100 Federal Street
Boston, MA 02110
(617) 357-9300

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

TRIAL COURT OF
MASSACHUSETTS BOSTON
MUNICIPAL COURT DEPARTMENT

CONSOLIDATED RAIL CORPORATION,
Plaintiff

v.

CIVIL ACTION
NO. 496470

HALLAMORE MOTOR TRANSPORTATION, INC.
Defendant

DEFENDANT'S MOTION FOR JUDGMENT
UPON AGREED STATEMENT OF FACTS

Defendant, Hallamore Motor Transportation, Inc. ("Hallamore") hereby moves for entry of judgment in its favor upon the Agreed Statement of Facts herein. In support hereof Hallamore relies upon its memorandum filed herewith.

By its attorneys,

_____

Zachary R. Karol
James E. O'Connell
BINGHAM, DANA & GOULD
100 Federal Street
Boston, MA 02110
(617) 357-9300

Dated:

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

TRIAL COURT OF
MASSACHUSETTS BOSTON
MUNICIPAL COURT DEPARTMENT

CONSOLIDATED RAIL CORPORATION,
Plaintiff

v.

CIVIL ACTION
NO. 496470

HALLAMORE MOTOR TRANSPORTATION, INC.
Defendant

DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION
FOR JUDGMENT UPON AGREED STATEMENT OF
FACTS

QUESTION PRESENTED

The question presented is whether a trucking company which completes the shipment of construction equipment from a railway terminal to a jobsite thereby becomes liable to the railway for freight charges merely because, without the knowledge or consent of the trucking company, it has been identified in the railway bills of lading and waybills as the "consignee," when those same documents, to the railway's knowledge, designate another entity as the party responsible for freight charges and when the railway itself has actual and constructive knowledge that the trucking company has no beneficial title to the cargo and is acting as agent for the sole purpose of transshipping it to another site. For reasons set forth below, the trucking company is not liable for freight under these circumstances.

FACTS

Plaintiff, Consolidated Rail Corporation ("Conrail"), is a rail carrier engaged in interstate commerce.* Defendant, Hallamore Motor Transportation, Inc. ("Hallamore"), is a motor carrier also engaged in interstate commerce. Conrail commenced this action against Hallamore to recover freight charges for shipping crane components from Cedar Rapids, Iowa to Worcester, Massachusetts, from which point they were transshipped by Hallamore's trucks to Quonset Point, Rhode Island. The crane components were shipped at the request of FMC Corporation, on behalf of Davis Machinery Company, Inc. ("Davis"), under bills of lading dated February 21 and February 27, 1979 (Exhibits B1 and B2 to Agreed Statement of Facts). The bills of lading clearly stated that freight bills were to be sent to Davis and that the freight was to be transshipped by Hallamore from Worcester to Eastern Steel Services ("Eastern"), Quonset Point, Rhode Island. Hallamore is identified in the bills of lading as "consignee." However, Hallamore did not know that it had been designated as consignee, did not authorize anyone to designate it as consignee and, in fact, never even saw the bills of lading until this action was commenced. (Facts ¶¶ 7, 8, 9).

The initial carrier of the crane parts, Cedar Rapids and Iowa City Railway Company ("CR & IC"), subsequently prepared two waybills, copies of which are attached to the Agreed Statement of Facts as Exhibits A1 and A2. The waybills similarly stated that freight bills were to be sent to Davis, that the freight was to be transshipped to Eastern and that Hallamore was consignee. Again, however, Hallamore did not know it had been designated as consignee and did not see the waybills until commencement of this action. (Facts ¶¶ 7, 8, 9)

---

*Facts stated herein are based upon the Agreed Statement of Facts ("Facts") and Exhibits appended thereto.

In sharp contract to Hallamore's complete lack of knowledge of the facts upon which Conrail bases its claim, Conrail, at all relevant times, did know that someone other than Hallamore had designated Hallamore as consignee; that Davis was named as the entity responsible for freight charges; and that the cargo was consigned to Hallamore for purposes of transshipping it to Eastern, in Quonset Point, Rhode Island. (Facts ¶¶ 11, 15) Of perhaps even greater significance, Conrail's Terminal Supervisor for the Worcester yard where Hallamore picked up the cargo in fact knew that Hallamore did not have beneficial title to it and was acting as agent for the sole purpose of transshipping the cargo to Eastern. (Facts ¶¶ 16, 17)

ARGUMENT

As far as Hallamore can determine, Conrail bases its claims entirely upon the fact that Hallamore, without its knowledge or consent, was named by some unknown person as "consignee" in bills of lading and waybills which it never saw until commencement of this action. Presumably Conrail believes its argument is supported by 49 U.S.C. § 10744.* However, it

* This statute, which replaced and codified that which formerly appeared at 49 U.S.C. §§ 3(2) and 323, provides, in pertinent part:

> (a) (1) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this subsection when the transportation is provided by a rail, motor or water common carrier under this subtitle. When the shipper or consignor instructs the carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the deliverying carrier before delivery of the property —
>
> (A) of the agency and absence of beneficial title; and

is now generally acknowledged that the purpose of Section 10744 and its predecessor statute was not to impose an absolute obligation upon a particular party to pay transportation charges, but rather only to assure that carriers would not offer more favorable terms to some shippers than to others. The rights of the parties generally depend upon the contractual agreements involved and the principles of the common law. *See, e.g., Consolidated Freightways Corp. of Del. v. Admiral Corp.*, 442 F.2d 56 (7th Cir. 1971). In *Consolidated Freightways*, the defendant was designated as the consignee on the bills of lading which, as in the present case, designated a third firm as the party to be billed for freight charges. The Court held for the defendant, stating:

> . . . [(P)laintiff] . . . strenuously urges that Section 223 of the Motor Carrier Act (49 U.S.C. Section 323) imposes absolute statutory liability upon the consignee . . .
>
> We discern nothing in the language or policies of Section 223 to suggest that Congress intended to impose absolute liability upon a consignee for freight charges . . . . 442 F.2d at 60-61.

The court then carefully reviewed the fifty year history of the statute and cases decided under it and concluded:

> Section 223 was not intended to fashion a rigid liability upon a consignee. Congress left the initial determination of a party's liability for freight charges to express contractual agreement or implication of law . . . . So long as pay-

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(B) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

> ment of the full tariff charges may be demanded from some party, the anti-discrimination policy of the Section is satisfied. *Id.* at 62.

Similarly, in the case of *In Re Roll Form Products, Inc.*, 662 F.2d 150, 154 (2d Cir. 1981), the court said:

> The Act, in our view, was not intended to "fashion a sword" to insure collection by carriers of freight charges. Nor do we think the Act was intended to impose an absolute liability upon consignees for freight charges. Its sole purpose was "to secure equality of rates to all and to destroy favoritism" . . . .

Citing *Consolidated Freightways*, the Court went on to say, "Congress left the initial determination of a party's liability for freight charges to express contractual agreement or implication of law." *Id. Accord, Lyon Van Lines, Inc. v. Cole*, 512 P.2d 1108, 1113 (Wash. App. 1973) ("[T]he overriding issue . . . is whether a determination that the consignee should not be held absolutely liable for the shipping costs will contravene the antidiscriminatory purpose of 49 U.S.C. § 323"); *Chicago & Northwestern Transp. Co. v. Krohn Cartage Co.*, 255 N.W. 2d 310, 313 (Wis. 1977) ("Merely being named as consignee . . . in the absence of an express contract or in the absence of conduct which will, by implication, impose liability does not subject a consignee to the obligation to pay the freight charges"). *See, also, American Railway Express Co. v. Mohawk Dairy Co.*, 250 Mass. 1, 9 (1924) ("Where there is express contract binding on him or necessary implication to that effect, the consignee is liable for the charges of transportation. In the absence of such facts, the consignee is not liable for such charges.")

Applying these principles to the case at bar, it is undisputed that there is no express contract between Conrail and Hallamore; if there is any contract at all, it must be one which arises by implication of law. (Facts ¶ 23) It is immediately apparent, however, that the only possible basis for implying a contract is the fact that Hallamore was named as consignee. Hallamore did not know this, however, and did not authorize anyone to designate it as consignee. Moreover, even though Conrail knew that someone other than Hallamore had identified Hallamore as consignee, (Facts ¶¶ 11, 15), it did not bother to advise Hallamore of this. (Facts ¶ 8) Also, Conrail knew that the cargo had been accepted for shipment by CR & IC upon the clear understanding that Davis would be billed for freight. Surely, it would be inequitable and improper to imply a contractual relationship between Hallamore and Conrail based upon these facts.* *See States Marine Int., Inc. v. Seattle-First National Bank*, 524 F.2d 245 (9th Cir. 1975) (Bank which held security interest in cargo and which, without its knowledge, had been named by shipper as consignee was not liable for freight charges.) *See, also, Merrill v. Kirkland Construction Co., Inc.*, 51 Mass. App. Dec. 129 (1973), *rev'd on other grounds*, 365 Mass. 110 (1974), where the court, after noting that the defendant had been named "consignee" without its knowledge or consultation, stated:

> A condition precedent to the imposition of any statutory liability on Kirkland is that Kirkland be found to be the actual consignee of the items delivered.
>
> . . .
>
> In the absence of the defendant's assumption of the role of consignee, we fail to see how the defendant can be held

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*Conrail has not even attempted to bring suit against Davis for freight charges. (Facts ¶ 19)

> liable under the statute. There is nothing to indicate that it was aware at any time of its designation as consignee on the bills of lading which designation was made without its knowledge. 51 Mass. App. Dec. at 139-141.

Even assuming, *arguendo*, that Section 10744 does impose an absolute obligation on consignees who are agents to pay freight charges unless they give the requisite notice of their agency and absence of beneficial title, it is clear that Conrail in fact had actual as well as constructive knowledge of these facts. Thus, Conrail knew from the written shipping documents that the cargo was consigned to Hallamore for transshipment to Eastern, in Quonset Point, Rhode Island. (Facts ¶ 9) Even more striking is the fact that Conrail's Terminal Supervisor for the Worcester yard had actual knowledge that Hallamore lacked beneficial title to the cargo and was simply transporting it over the final leg of its route from Iowa to Rhode Island. (Facts ¶¶ 16, 17)

Conrail might argue that despite this actual and constructive knowledge on its part, Hallamore remains liable under the statute because Hallamore did not itself deliver written notice of these facts to Conrail. An identical argument was made and squarely rejected in *Penn Central Transportation Co. v. United Aero Marine Services, Inc.*, 91 Misc. 2d 839, 398 N.Y.S. 2d 780 (1977), a copy of which is attached hereto. In *United Aero* the named consignee did not itself give written notice of its agency status to Penn Central, but the bill of lading indicated that it was receiving the goods on behalf of another party. The court held that the bill of lading satisfied the statutory notice requirement, giving the following explanation:

> The manifest purpose of the statute is not only to require prior notice to the carrier but also to avoid after the fact claims by a consignee that he had orally advised the car-

> rier that he was only an agent and lacked beneficial title. In the instant case, the very documents, the waybills, that stated that United was the consignee also stated that it was the consignee only for the account of another . . . . That statement tells all but those unwilling to receive the message that United is only an agent, has no beneficial title, and that the carrier may not look to it for the payment of any charges. The carrier cannot blind itself to those writings and insist that the writings of agency and disclaimer of title must come from the consignee . . . . [T]he very waybills that govern the transportation are sufficient to fulfill that written notice requirement.

In the instant case, not only did Conrail have constructive notice, based upon the shipping documents, of the "consignee's" agency and absence of title, as in *United Aero,* but it also had actual knowledge of these facts, through its Worcester Terminal Supervisor. Moreover, it would clearly be both inconsistent with legislative intent and the height of unfairness to require Hallamore itself to give written notice when it in fact did not know or have any way of knowing that it, rather than Eastern, had been named as consignee.

In short, Conrail knew that Hallamore never had any interest in the cargo and that, like itself, its only function was to furnish transportation services on behalf of the real consignee, Eastern. We have found no case where one carrier was permitted to recover its own freight charges from a continuing carrier under such circumstances.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that judgment upon the Agreed Statement of Facts should be entered for Hallamore.

By its attorneys,

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Dated:

COMMONWEALTH OF MASSACHUSETTS SUFFOLK, SS	MUNICIPAL COURT FOR THE CITY OF BOSTON NO. 496470
CONSOLIDATED RAIL CORPORATION, Plaintiff v. HALLAMORE MOTOR TRANSPORTATION, INC., Defendant	MOTION FOR JUDGMENT UPON STIPULATED FACTS

Now comes the plaintiff, Consolidated Rail Corporation, and respectfully moves that this honorable Court grant judgment in its favor. As grounds for its motion, the plaintiff states that there are no issues of fact which are in dispute as the parties have submitted a joint statement of the facts, and that this is a case to recover freight charges for services actually rendered, all as more fully set forth in the plaintiff's memorandum in support hereon.

Consolidated Rail Corporation
By its attorney,

_____

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COMMONWEALTH OF MASSACHUSETTS SUFFOLK, SS	MUNICIPAL COURT FOR THE CITY OF BOSTON NO. 496470
CONSOLIDATED RAIL CORPORATION, Plaintiff v. HALLAMORE MOTOR TRANSPORTATION, INC., Defendant	MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT

I. FACTS

This case involves the claim of the plaintiff, Consolidated Rail Corporation (hereinafter called "Conrail"), against the defendant, Hallamore Motor Transportation, Inc. (hereinafter called "Hallamore") to recover freight tariff charges of $9,118.57, owed to Conrail for hauling crane components which were consigned to Hallamore. Hallamore contends that since it was not the owner of the crane components and that it did not agree to be the consignee, it is not responsible for the payment of the tariff charges. Conrail contends that this argument is without merit as Hallamore unloaded the crane components and took physical custody of that cargo. Both Conrail and Hallamore are moving for summary judgment in the instant suit.

II. ARGUMENT

I. A PARTY WHO: (a) IS NAMED AS CONSIGNEE ON A WAYBILL, (b) DOES NOT NOTIFY THE CARRIER THAT IT IS NOT RESPONSIBLE FOR PAYMENT OF THE FREIGHT CHARGES IN WRITING PRIOR TO RECEIVING THE GOODS, AND (c) DOES IN FACT TAKE THE CARGO, IS A MATTER OF LAW RESPONSIBLE FOR THE PAYMENT OF THE APPLICABLE FREIGHT CHARGES.

The law pertaining to the payment of freight charges by a common carrier engaged in interstate commerce has long been settled. Once a party who is named as consignee on a waybill receives the cargo that has been transported by common carrier, that party is responsible for the payment of the freight charges. No amount of oral representations, ignorance nor lack of authority by anyone can obviate or alter the named consignee's obligation to pay the freight charges if such entity chooses to unload it.

The leading case of *Pittsburg, Cincinnati, Chicago & St. Louis R. Co. v. Fink,* 250 U.S. 577, 40 S. Ct. 27 (1919) established the general rule that if the consignee named on a waybill accepts a shipment, it becomes liable as a matter of law for the full amount of the freight charges. That case based its holding on the congressional policy embodied in Section 6(7) of the Interstate Commerce Act (49 U.S.C. § 1 et. seq.), whose purpose was to secure uniformity in charges for transportation. Reasoning that the statute made it unlawful for a carrier to receive compensation less than the sum fixed by duly filed tariff rates, the court concluded that the consignee was entitled to merchandise only upon payment of transportation charges, and once the merchandise is taken, the obligation to pay is vested. Th is was true even though the consignee had paid the amount specified in the waybill, an amount later determined to be erroneous. Notwithstanding the defendant's

claims of reliance, the court declined to invoke the principle of estoppel, stating that "estoppel could not become the means of successfully avoiding the requirement of the (Interstate Commerce) act as to equal rates in violation of the provisions of the statute."

When goods are shipped interstate by common carrier, the freight rate is determined by the tariff filed with the Interstate Commerce Commission. The legal amount of the freight charges owed to the common carrier is then deduced through the application of the tariff rate to the actual weight of the goods shipped. In this manner, freight costs are set by law; consequently, no contract nor any act short of the running of the statute of limitations can prevent the carrier from enforcing for the freight services rendered. *Louisville & Nashville Railroad Company v. Central Iron & Coal Company,* 265 U.S. 59, 65 (1923); and *Southern Pacific Transportation Company v. Commercial Metals,* 102. S. Ct. 1815, 1820 (1982).

Not only does the carrier have the right to demand the full amount for freight charges due, it has the duty to do so under the Interstate Commerce Act and its attendant regulations. *Commercial Metals,* supra, at 1820. In addition, all parties to domestic interstate shipment contracts are presumed to know the law. *Pittsburg, Cincinnati, Chicago & St. Louis Railway Company v. Fink,* supra.

It should be noted that a delay in requesting payment does not undercut the above rule. If a shipment is accepted, the consignee becomes liable for freight charges, whether they are demanded at the time of delivery or thereafter. *Fink, supra*; *Louisville & N.R. Co. v. Maxwell,* 237 U.S. 94, 38 S. Ct. 494 (1915); *Southern Pacific Co. v. Wheaton Brass Works,* 76 A.2d 890, 5 N.J. 394 (1950).

In *Great Northern Ry. Co. v. Hyder,* 279 F. 783 (D.C. W.D. Wash. S.D., 1922), the issue presented for determination was similar to that alleged by the defendant to have occurred

in the instant case: "Can a consignee, who is not at any time the owner of the goods shipped, who has not agreed with either the shipper or the carrier that he will pay the freight, who accepts the goods upon the carrier's representation that the freight has been prepaid, be bound by such acceptance to pay the freight?" The court responded in the affirmative reasoning that estoppel should not apply since "the shipper, the carrier, and the consignee are all agents and trustees for the public, and no complications arising out of the agreements between them, or shuffling, should defeat the purpose of the act requiring full and exact payment of the freight as fixed by the filed, posted, and published tariff." *Id* at 785.

Similarly, in *Western & Atlantic R. Co. v. Underwood,* 281 F. 891 (D.C. N.D. Ga. 1922), the court found the issue to be well-settled that "the consignee cannot accept delivery without incurring liability for the carrier's charges, known or unknown, supposed to be prepaid or otherwise, and no matter what the consignee's actual relation to the shipper is." In elaboration, the court stated that if the consignee was thus made liable for a charge which he should not bear, his recourse was on the shipper. The carrier was not bound by the private rights of the parties to the transaction, whether known or unknown to it, and could look for payment to the shipper or to the consignee, who upon acceptance of the goods, becomes statutorily liable to discharge the carrier's lien thereon. See also *Southern Pacific Company v. Miller Abattoir Company,* 454 F.2d 357 (3rd Cir. 1972). The logic of this rule is unmistakeable. If the party taking possession of the goods is not satisfied that all obligations have been paid, it can hold the goods until it is satisfied. But more importantly, the consignee (Hallamore) can choose to reject taking the goods, and then the carrier (Conrail) can hold the cargo until its lien for freight charges is paid. It is not Conrail's obligation to check the arrangements made between the shipper and the consignee.

The defendant argues that it never agreed to become liable for freight charges. Assuming the truth of this allegation, it is irrelevant to the determination of liability since the plaintiff's right to recover is based on the Interstate Commerce Act and federal cases interpreting that act, and not on state common law. See *Southern Pacific Co. v. Wheaton Brass Works*, 76 A.2d 890, 5 N.J. 394 (1950). As already discussed, under federal law, the cases have held that the carrier is not bound by the contractual rights of the parties. If any such agreement was made, the defendant's appropriate remedy is to seek indemnification from the party with whom the agreement was made. A denial of liability is not an available defense.

It should be noted that although some of the above-cited cases holding the consignee liable as a matter of law are premised upon a section of the Interstate Commerce Act that has since been repealed (Section 6 (7)), Congress has made it clear that newly enacted sections serve only to codify the repealed sections and that no alteration in the existing law is intended; nor have the holdings of these cases been overruled. Rather, in enacting Section 10744, covering liability of consignees, Congress explained that

> Like other codifications undertaken to enact into positive law all titles of the United States Code, *this bill makes no substantive change in the law*. It is sometimes feared that mere changes in terminology and style will result in changes in substance or impair the precedent value of earlier judicial decisions and other interpretations. This fear might have some weight if this were the usual kind of amendatory legislation where it can be inferred that a change of language is intended to change substance. In a codification statute, however, the courts uphold the contrary presumption: *the statute is intended to remain substantially unchanged*. (Emphasis added) H. R. Rep.

> No. 1395, 95th Cong. 2d Sess. 9 (1978), reprinted in [1978] U.S. Code Cong. & Ad. News 3009, 3018.

Thus, the liability of the consignee remains unaffected by new statutory codifications, and the plaintiff is entitled to recover from the defendant consignee as a matter of law.

Finally, the consignee may not contract out of liability with facts such as those that are present. In the absence of a clear agreement to the contrary, the Interstate Commerce Act will bind the named consignee to pay freight charges to the carrier on goods he accepts, this obligation being independent of the obligations of other parties. *Roll Form Products, Inc. v. All State Trucking Company*, 662 F.2d 150 (2nd Cir. 1981). The plaintiff was bound by no agreement to the contrary, nor has the defendant alleged the existence of such an agreement with the plaintiff. As the court pointed out in *Southern Pacific Company* v. *Miller Abattoir*, supra:

> Under § 6(7) of the Interstate Commerce Act, 49 U.S.C.A. § 6(7),[3] carriers are forbidden to charge any rate different from the tariff rate. As a corollary, an accepting consignee owes the full tariff charge despite initial misquotation or miscalculation of freight charges by the carrier. A contract to carry for less than tariff rates is void and will not prevent recovery of tariff rates. It is the carrier's duty as well as its right to enforce payment of full tariff charges. Even though the results may be harsh in individual cases, this strict cnstruction of the statute has been thought necessary to effectuate its purpose to secure uniform treatment of shippers and to prevent discrimination and favoritism by carriers. (Citations omitted) *Id*, at 359-360. (Emphasis supplied)

More recent cases holding that the consignee may contract out of liability are unavailing. For example, in *Roll Form Prod-*

ucts, Inc. v. All State Trucking Co., 662 F.2d 150 (2nd Cir. 1981), the court ruled that where all parties to an action have formally entered a contract requiring the customer-consignees to pay freight charges exclusively to the manufacturer-shipper, and for the carrier to look solely to the latter for payment, the customer-consignees would not be independently liable to the carrier for freight charges, absent discriminatory practices. However, the court remanded the case since the issue of the formality of the contractual arrangement had not properly been resolved.

While the *Roll Form* court held that a specific contractual arrangement would not be invalidated by current codification of the policy in the Interstate Commerce Act (§ 10744), it stressed that the section as a general rule renders "the consignee . . . prima facie liable for the payment of the freight charges when he accepts the goods from the carrier." *Roll Form*, 662 F.2d at 153 citing *Fink*, 250 U.S. at 581. The court's narrow exception was limited to a situation where *all* parties — consignee, consignor, and carrier — entered a formal contractual relationship. In clarification, the court added, "of course, where parties fail to agree, or where discriminatory practices are present, the Interstate Commerce Act will bind the consignee to pay freight charges to the carrier on goods he accepts, this obligation being independent of the consignor's own obligations." *Roll Form*, 662 F.2d at 154.

As stipulated by the parties to the instant action, the plaintiff, Consolidated Rail Corporation, has had no communication with the defendant, either oral, written, or otherwise, prior to the time at which the freight was unloaded by the defendant. Hence, the plaintiff was obviously not a party to any contractual agreement regarding the defendant's liability or non-liability for the contested freight charges, nor has the defendant alleged the existence of any such contractual obligation entered into with, or other known to, the plaintiff. The general rule of consignee liability is therefore applicable in the present case.

In addition to the freight charges due from Hallamore to Conrail, Conrail is also entitled to interest on the outstanding balance pursuant to the policy underlying Section 6(7) of 49 U.S.C.A. In *Southern Pacific Company v. Miller Abattoir, supra,* at 362, the court stated:

> Under (49 U.S.C.A. § 6(7)), the only lawful charge for the shipping (of the goods at issue) is the full tariff charge. to allow the Railroad to recover without awarding prejudgment interest would be to diminish the tariff charge by an amount representing the value of the use of the money owed for the period prior to judgment. Such a diminution would be contrary to § 6(7).

Other circuit courts have upheld the granting of interest on freight charges as well. In *Louisiana & Arkansas Railway v. Export Drum Company,* 359 F.2d 311 (5th Cir. 1966), the court, emphasizing the need for a unified national policy held that ". . . in actions initiated in the federal district courts for undercharges on freight shipments, interest from the time the money is due (the date of shipment) is a mandatory element of damages. (Parentheses are the courts)." See also *Fawley Motor Lines v. Cavalier Poultry Corporation,* 235 F.2d 416 (4th Cir. 1956); *T &M Transportation Company v. S.W. Shattuck Chemical Company,* 158 F.2d 909 (10th Cir. 1947). Conrail should therefore, be awarded interest on the $9,118.57 in freight charges owed to it by Hallamore from the date payment was originally due.

III. CONCLUSION

Hallamore had the option of refusing to take the crane components. Had it done so, this case would not be before the court today. However, having been named on the waybills as consignee and having taken physical custody of the compo-

nents, Hallamore has no defense to Conrail's claim for the freight tariff charges other than the running of the Statute of Limitations, which defense is not available here.

Consolidated Rail Corporation
By its attorney,

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February 21, 1985

The Honorable Edward F. Hennessey
Chief Justice
Supreme Judicial Court of the
Commonwealth of Massachusetts
New Court House
Pemberton Square
Boston, Massachusetts 02108

Re: Petition for Rehearing in Consolidated Rail Corporation v. Hallamore Motor Transportation, Inc.; No. SJC-3555

Dear Mr. Justice Hennessey:

Pursuant to Rule 27 of the Rules of Appellate Procedure, Consolidated Rail Corporation ("Conrail") hereby petitions for a rehearing of the above matter, decided by this Honorable Court on February 11, 1985 in an opinion rendered by Justice Wilkins. As will be more fully explained in the ensuing discussion, Conrail respectfully contends that the Court overlooked or misconstrued certain fundamental points of law which are necessary to the proper resolution and disposition of this case. In short, this Court has established a precedent that could lead to situations where no party will be liable for a common carrier's freight charges. Therefore, I urge the Court to reconsider its decision in light of the controlling federal law regarding shipments by common carriers engaged in interstate commerce, regulated by the United States Congress in accordance with Article I, Section 8 of the United States Constitution. Those points of law will be set forth with particularity in the following paragraph herein, as required by Rule 27.

In its opinion, the Court has misconstrued both the application and substantive effect of the Interstate Commerce Act ("the Act"), particularly Section 10744 (a)(1) which governs liability for common carrier freight charges. Contrary to the opinion written by Justice Wilkins, that section of the Act does govern the transaction at issue in the instant action, and imposes liability for payment of the subject freight charges upon the consignee that accepted delivery of the goods, Hallamore Motor Transportation, Inc. ("Hallamore"). Furthermore, the Court held that because this section of the statute was inapposite to the transaction at issue, "[O]ur task is to determine whether, on common law principles, Hallamore is liable for the freight charges." *Id.* Sl. Op. at 3.[1] It is respectfully submitted that the foregoing statement, set forth without any citation to case or statutory authority, is erroneous in light of certain long-standing and well settled principles of federal law in this area.

PROCEDURAL HISTORY & STATEMENT OF FACTS

This case was commenced when Conrail filed its Complaint in the Boston Municipal Court in January of 1980. Hallamore filed its Amended and Substituted Answer in February of 1983. Thereafter, the case was submitted on an Agreed Statement of Facts, and judgment was entered for Conrail. The Court found that Hallamore had unloaded the freight and carried it away, thereby incurring liability under the Act as the named consignee. This judgment was affirmed by the Appellate Division, and an appeal to this Court followed. This Court reversed the judgments entered by both the lower Courts.

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[1] All citations to the Court's Opinion will, of necessity, be to the six-page slip opinion published on April 11.

The facts of this case, as summarized by this Court in its opinion, will suffice to illustrate the points of law raised in this Petition. Those facts were stated as follows:

> We summarize the facts. Hallamore, without its authorization or knowledge (until this action was commenced), was named by someone other than Conrail as consignee of the shipments on each bill of lading and each waybill. As Conrail knew prior to delivering the cargo to Hallamore, each bill of lading and each waybill stated that the cargo was for transshipment to Eastern Steel Services, Inc., care of General Dynamics, Quonset Point, Rhode Island. These documents also stated that freight bills should be sent to David Machinery, Inc., in King of Prussia, Pennsylvania. As Conrail's field terminal supervisor in Worcester knew, Hallamore had no beneficial interest in the cargo and was acting as an agent for the sole purpose of transshipping the cargo to Rhode Island. Hallamore did not give Conrail written notice of its lack of beneficial ownership of the cargo before unloading it. Conrail did not request payment from Hallamore when Hallamore unloaded the cargo.

Id., Sl. Op. at 2.

It was upon this set of facts that the Court found that "Hallamore's liability is to be determined by common law principles and is not governed by any provision of the Interstate Commerce Act (49 U.S.C. sec. 501-11917 [1982])." *Id.* Thus, the Court apparently concluded that it was free to apply common law principles of its own choice to effect a disposition of this case. This was error, because the transaction at issue is governed by the Act, and an unbroken line of cases decided by the United States Supreme Court and lower federal courts establish that Hallamore is liable for the charges.

ARGUMENT

Conrail contends that Section 10744(a)(1) of the Act controls the fact situation set forth by the transaction at issue. (A copy of this section of the statute is appended to this Petition for your convenience). In point of fact, it is difficult to see how the Court arrived at the conclusion that Section 10744 (a)(1) of the Act did not apply to the parties' transaction, when the first sentence states that "liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, *is determined under this sub-section* when the transportation is provided by a rail, motor, or water common carrier under this sub title [emphasis supplied]." Thus, the literal wording of the statute demonstrates that it *does* govern the transaction at issue in the instant action, and any construction of the statute that reaches a contrary result is erroneous as a matter of law.

Justice Wilkins placed great emphasis upon the portion of Section 10744 which states that "the consignee is liable for rates billed . . . 'for which the consignee is otherwise liable.'" He then went on to quote from *Consolidated Freightways Corp. of Del. v. Admiral Corp.*, 442 F.2d 56 (7th Cir. 1971), which stated in part "Congress left the initial determination of a party's liability for freight charges to express contractual agreement or implication of law." *Id.*, at 62. In *Consolidated Freightways*, the Seventh Circuit's majority opinion (2-1) held that a consignee could raise the defense of estoppel to avoid *double* payment of the freight charges. Thus, apparently finding the statute's application to be "conditional," Justice Wilkins has predicated his construction of the Act upon a case that is inapposite to the issues presented by the instant action. Even more curiously, he then cited *Louisville & Nashville R.R. v. Central Iron & Coal Co.*, (265 U.S. 59 (1924)) and *Pittsburg, Cincinnati, Chicago & St. Louis R.R. v. Fink* (250 U.S. 577

(1919)) as cases in accord with the holding of *Consolidated Freightways, supra*.[2] Justice Wilkins then fundamentally erred when he went on to reach an incorrect conclusion, notably "[O]ur task is to determine whether, on common law principles, Hallamore is liable for freight charges." *Id.*, Sl. Op. at 3.

The holding and reasoning in *Fink* directly contradicts and refutes this Court's conclusion that common law governs the instant transaction:

> Examination shows some conflict of authority as to the liability at common law of the consignee to pay freight charges under the circumstances here shown. The weight of authority seems to be that the consignee is *prima facie* liable for the payment of freight charges when he accepts goods from the carrier.
>
> . . . .
>
> However this may be, in our view the question *must be* decided upon consideration of the applicable provisions of the statutes of the United States regulating interstate commerce [emphasis supplied].

Fink, 250 U.S. at 580-1.

Thus, the Court in *Fink* made it crystal clear that its decision was premised upon the Act, not upon any deference to the common law, particularly the common law of any of the states. Furthermore, the *Fink* decision embraces another fundamental premise of the law pertaining to liability for freight charges. That premise, which is particularly germane to proper disposition of the instant action, is that the Act deems the consignee's acceptance of the freight as constituting an implied promise

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[2] As will be discussed more fully below, these cases and their progeny do *not* lend support for the analysis or result found in *Consolidated Freightways*.

to pay the applicable freight charges. The carrier releases the goods, and its lien upon the goods, on the assumption that the consignee will pay the charges:

> For the legal charges the carrier had a lien upon the goods, and this lien could be discharged and the consignee become entitled to the goods only upon tender or payment of this rate. [citation omitted]. The transaction, in light of the act, amounted to an assumption on the part of [the consignee] to pay the only legal rate the carrier had the right to charge or the consignee the right to pay.

Fink, 250 U.S. at 582. Thus, *the Act* imposes upon an accepting consignee a promise to pay the carrier the lawful freight charges. The obligation is *not* based upon any notion of common law liability, but upon the intent of Congress that there be a uniform policy with regard to the rates charged. *Id.*[3]

In support of its erroneous conclusion that common law principles governed the disposition of the instant action, the Court cited the *Consolidated Freightways* case from the Seventh Circuit, wherein a consignee was allowed estop the carrier from collecting charges so as to avoid double payment by the consignee. It is imperative that this Court be mindful that the doctrine of estoppel has been virtually completely discredited as far back as *Central Iron* and *Fink*. Furthermore, to the extent that *Consolidated Freightways* was premised upon a finding that the Act would give way to state common law, this conclusion is in disregard of the express wording of *Fink*, and is vitiated by the subsequent case of *Southern Pacific Transp.*

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[3] It is imperative to note that the consignee, although he may possess the goods, is "*entitled* to the goods" only when payment is made. Therefore, a consignee who takes the goods, but repudiates the attendant obligation to pay, has engaged in conversion.

Co. v. Commercial Metals, 102 S.Ct. 1815 (1982). In no uncertain terms, *Commercial Metals* reaffirms the fact that *Fink* and *Central Iron* are indeed still the law. Furthermore, in so doing, it cited *Consolidated Freightways* as part of a group of cases where a carrier's own misrepresentation, coupled with concomitant detrimental reliance by a consignee, allowed the consignee to assert the affirmative defense of estoppel. The court noted that "these double payment cases constitute their own category and stand against the placement of duplication of liability upon an innocent party." *Id.*, 102 S.Ct. at 1824. In light of *Commercial Metals*, this Court's reliance upon *Consolidated Freightways* is questionable. That case is indeed frail authority, in light of its holding that a carrier can be estopped from collecting freight charges.[4]

This Court has allowed Hallamore to escape its lawful obligations by relying upon a case which the United States Supreme Court has expressly limited in scope to a fact situation *not* presented by the instant action. There is no inequitable conduct by Conrail, nor is this a case in which a carrier stands to collect double payment from a consignee. Rather, this Court's decision has established a precedent whereby no party will be liable for payment of the carrier's charges.

It is respectfully suggested that the Court has misconstrued and misinterpreted the holdings of the Supreme Court in *Fink*, *Central Iron*, and more recently *Commercial Metals*. The fact that those cases discuss common law principles incorporated by the Act does not mean that the Act gives way to state common law rules or doctrines. This Court's citation to Massachusetts authority (Sl. Op. at 5), particularly such authority

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[4] The *Commercial Metals* Court hardly gave an overwhelming endorsement to *Consolidated Freightways*, but only grudgingly acknowledged four factors that militated in favor of allowing the consignee to raise the defense of estoppel, none of which are extant here. *See* 102 S.Ct. at 1822.

that has been reversed on the grounds of the federal statute (*New York Cent. & Hudson River R.R. v. York & Whitney Co.*, 230 Mass. 206 (1918)), is inappropriate. In addition, the other authority cited in that section of the opinion, *States Marine Int'l v. Seattle First Nat'l Bank*, 524 F.2d 245 (9th Cir. 1975) held a consignee did not incur liability, but this holding was based upon an express finding that the consignee had not "accepted" the goods within the meaning of *the Act*. The decision was not premised upon state common law grounds. Unlike Hallamore, the consignees which have managed to avoid liability have been able to do so upon an express finding that they did not accept the goods, or engage in other conduct rendering them liable for payment under the Act. *States Marine, supra*; *Chicago & Northwestern Transp. Co. v. Krohn Cartage Co.*, 79 Wis.2d 39 (1977); *Penn Cent. Transp. Co. v. United Aero Marine Servs., Inc.*, 398 N.Y.S. 2d 780 (1977).

Central Iron, Fink and now *Commercial Metals* stand for the proposition that the Act *incorporates* certain long-standing principles of common law, but the Act does not *defer* to state common law at any point in time. Any such reading of the Act is anomalous in light of the fact that Congress has pre-empted the field of interstate commerce by virtue of its constitutional mandate, as well as the express terms of Section 10744. If this Court were correct in its conclusion that its task is to determine liability based upon common law principles, the Interstate Commerce Act becomes a nullity and would be completely eviscerated by virtue of its being subject to the vagueries and discrepancies among the common law doctrines of the 50 states of this Republic. It would be a complete contradiction of the purpose of the Act if it could be construed differently according to the particular state jurisdiction wherein a commercial transaction between carrier and consignee took place.

Thus, in finding that Section 10744(a)(1) of the Act did not apply to the instant transaction, this Court fundamentally erred in concluding that the Act gives way to state common law. The Act does not give way to state common law under *any* circumstances. Court approved avoidance of statutorily imposed freight charges can only occur by raising an affirmative defense recognized by the Act, and then only when some injustice such as double payment is involved. *Commercial Metals*.

To the extent the Court's opinion is based upon a conclusion that Hallamore is somehow excused from literal compliance with the statute, this was error. The fact that Hallamore is a trucking company, and was unaware it had been named as consignee on the bills of lading is of no significance under the statute. For example, even if an entity is in the business of being a freight consolidator, meaning it is always acting as agent for transshipment of the freight of another, that entity will still be deemed a consignee under the Act's Section 10744 when it is so named. *Blanchette v. Hub City Terminals, Inc.*, 683 F.2d 1008, 1010 (7th Cir. 1982). In *Hub City*, the consolidator attempted to argue that it could be a consignee for some purposes, but not for others. This argument was squarely rejected by the United States Court of Appeals for the Seventh Circuit. *Ibid.*

In addition, any conclusion by this Court that Hallamore can be excused from literal compliance with the statute based upon Conrail's actual knowledge of its agency status is refuted by *Hub City, supra*, as well as the fact that Hallamore cannot rely upon the bills of lading as giving the proper notice. Every shipment of freight is accompanied by a bill of lading. To allow words such as "for transshipment to Eastern Steel Services" to fulfill the statute's requirement of express written notice of one's agency status would completely eviscerate the statute of its effectiveness. If Hallamore had given the requisite written notice, demonstrating that it would not be liable for the

freight charges, then the Railroad is in a position where it can make a decision as to whether it will release the goods or not. As the Court noted in *Fink*, a carrier by rail has a lien on the goods carried, and that lien is released conditioned upon the consignee's implied promise to pay. Only when Hallamore gives the required express written notice, can a carrier such as Conrail then make a decision that it will release its lien upon the goods. *Id.*, 250 U.S. at 582.

To allow the shipping documents, often capable of varying constructions, to substitute for the notice required by the statute reduces the written notice provision to a nullity capable of evasion and circumscription at will. With respect to this issue, the *Consolidated Freightways* opinion cannot withstand the weight of proper analysis under the principles enunciated in *Commercial Metals*. In *Consolidated Freightways*, Chief Circuit Judge Swygert's dissent criticized the majority's reading of *Central Iron* and *Fink* as being totally at odds with the history of the Act. He noted that the Act imposes strict liability for payment of the charges, and does not give way to state common law in any fact situation. He correctly interpreted *Fink* when he stated:

> The liability of the consignee is statutory. It is irrelevant that the consignee may have demanded that the consignor agree to pay freight charges, *or that the bill of lading provided that the freight was to be paid by the consignor* [emphasis supplied].

Id. at 64. This interpretation is vindicated by the subsequent opinion of the Supreme Court in *Commercial Metals*.

It should also be noted that Section 10744 requires the *consignee* to be the one to give the written notice. In the instant action, the bills of lading (as is often the case) were prepared

by the consignor/shipper. Thus, not only was the billing arrangement noted on those documents insufficient to apprise Conrail of the fact of Hallamore's purported agency status, *Hallamore* did not give notice of its status to the Railroad prior to unloading the freight as required by sec. 10744. Instead, Conrail's only knowledge of Hallamore's agency status was gleaned from the shipper's bill of lading. The statute's wording seeks to compel the entity accepting the freight to unequivocally state that it will not be liable for the freight charges. Standard shipping documents cannot accomplish that purpose, especially bills of lading prepared by an entity other than an accepting consignee.

The Court's error on this issue is further illustrated by the fact that Paragraph (B) of Section 10744 requires that the notice apprise the carrier of "the name and address of the beneficial owner of the property. . . ." Therefore, it is not enough that Hallamore rely upon the waybills or bills of lading to disavow liability; Hallamore must discharge a duty imposed by the Statute to name the person or entity who is to be responsible for the charges. Once such notice has been given, the Railroad can make a choice. Only then can it be in a position to make an informed decision to *knowingly* release its lien upon the goods, and relinquish its statutorily prescribed right and *duty* to collect the charges. Conrail was not allowed this opportunity, and the Court's holding that it was not entitled to such opportunity is error.

One case which is instructive of the notice requirement is *Payment of Detention Charges, Eastern Central States,* 335 ICC Rep. 537 (1969), *aff'd sub nom, Middle Atlantic Conference v. U.S.,* 353 F. Supp. 1109 (D. DC 1972). The Interstate Commerce Commission held that a party designated on shipping documents as a "Bill To" or "On Account Of" entity is not a party to the shipping transaction who can engender liability for freight charges under Section 10744. Thus, contrary

to the implication of this Court's opinion, Conrail cannot seek payment from the other entities named on the shipping documents — Eastern Steel Services, Inc. or Davis Machinery.

However, under the reasoning of this Court's opinion, Conrail released the freight and its lien upon it, but in so doing it has no recourse whatsoever against any of the three entities at the end of the line where the cargo is delivered. By deciding that Hallamore is not liable for these freight charges, this Court has managed to disregard the Commerce Clause of the United States Constitution, the Interstate Commercial Act promulgated under it, and all of the relevant decisions of the United States Supreme Court rendered in this century.

The Court's decision impermissibly interferes with a comprehensive federal scheme for regulating interstate shipments. Congress has pre-empted the field by virtue of the Interstate Commerce Act. The Act's incorporation of certain common law principles does not mean that it will defer to state law for determining whether a consignee is liable for freight charges on interstate shipments. Unless a contrary result appears, legislation of Congress is presumed to pre-empt the field of commerce, and if the nature of the activity is not local in nature, the states are forbidden to regulate. *Cooley v. Board of Wardens*, 53 U.S. 299 (1851).

The teachings of *Fink* and *Central Iron* are that the statute intentionally precludes discrimination by some carriers offering terms more favorable to some shippers than others. The Act protects all parties to interstate transactions by refusing to allow the collection of freight charges to be dependent upon private agreements between the shipper and the consignee. Even acts or omissions of the carrier cannot estop or preclude it from collecting the charges owed, because Congress has utilized the Act to establish the terms of the contract which binds all the parties to the transaction — shipper, carrier and consignee.

Thus, when this Court states that the initial determination of a party's liability for freight charges is left to "express contractual agreement or implication of law" (Sl. Op. at 3), it must take note of the fact that it is the Act which forms the contractual agreement. Liability for freight charges is determined "by implication of law," because it is the Act that supplies the material terms of a contract between shipper, carrier and consignee. In transactions which occur in the private sector, the fundamental "meeting of the minds" occurs through a process of negotiation and compromise between or among the parties. However, under the Interstate Commerce Act, the statute itself supplies this ingredient — its terms substituting for the usual "meeting of the minds" that occurs when private parties bargain to allocate the rate to be charged, and which party shall bear the risk of loss for non-payment of that rate.

This is the teaching of *Central Iron* and *Fink*, and most recently affirmed in *Commercial Metals*. Congress does not intend that interstate shipments should be governed by private agreements between the parties, or should give way to the differing interpretations of various state laws when deciding questions of liability for payment of rates. Rather, the Act is a comprehensive federal regulatory scheme which pre-empts state interference. Any contrary construction of the Act will render it an unenforceable nullity which perforce could never accomplish its purpose — the uniform regulation of interstate commerce as prescribed by the United States Constitution.

The applicable statutes and cases demonstrate that the lower courts which decided this case in Conrail's favor were correct. Both Congress and the Supreme Court have spoken without equivocation on the salient issues presented by this case. This Court should not attempt to re-write the Interstate Commerce Act or to ignore the controlling precedent of the United States Supreme Court. It is respectfully submitted that this Court must correct the errors made in the disposition of this case.

CONCLUSION

For all of the foregoing reasons, Conrail should be granted a rehearing of this matter, and the Court's rescript should be reversed and modified, affirming the lower court's judgment for Consolidated Rail Corporation.

CONSOLIDATED RAIL CORPORATION
By its attorney,

Michael A. Fitzhugh

Supreme Court, U.S.
FILED
SEP 26 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 84-1872.

In the Supreme Court of the United States.

OCTOBER TERM, 1984.

CONSOLIDATED RAIL CORPORATION,
PETITIONER,

v.

HALLAMORE MOTOR TRANSPORTATION, INC.,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS.

Brief in Opposition to Petition for Certiorari.

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29pp

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

SUMMARY OF ARGUMENT 1

ARGUMENT

I. The Decision by the Massachusetts Supreme Judicial Court is Not in Conflict with Applicable Decisions of this Court. 3

II. The Decision by the Massachusetts Supreme Judicial Court is Consistent with Decisions of Other State Courts of Last Resort and of Federal Courts of Appeals. 12

III. The Decision by the Massachusetts Supreme Judicial Court does not Bar Conrail from Collecting Freight Charges. 19

CONCLUSION 24

TABLE OF AUTHORITIES

CASES:

Chicago & Northwestern Transp. Co. v. Krohn Cortage Co., 79 Wis.2d 39, 255 N.W.2d 310 (1977) 17, 18

Consolidated Freightways Corp. of Delaware v. Admiral Corp., 442 F.2d 56 (7th Cir. 1971) 12, 15, 16,

L & N R.R. v. Central Iron Co., 256 U.S. 59 (1924) passim

Lyon Van Lines v. Cole, 9 Wash. App. 382, 512 P.2d 1108 (1973) 15

Middle Atlantic Conference v. United States, 353 F.Supp. 1109 (D.D.C. 1972) 20, 22n

Payment of Detention Charges, Eastern Central States, 335

I.C.C. 537 (1967), aff'd sub nom. Middle Atlantic Conference v. United States, 353 F.Supp. 1109 (D.D.C. 1972) 20, 21

Pittsburgh, Cincinnatti, Chicago & St. Louis Ry. v. Fink, 250 U.S. 577 (1919) passim

Roll Form Products, Inc. v. All State Trucking Co., 662 F.2d 150 (2d Cir. 1981) 14, 15

STATUTES:

49 U.S.C. §323 12, 13, 16, 22n

49 U.S.C. §§501--11917 passim

49 U.S.C. §10744 9n, 10n

SUMMARY OF ARGUMENT

The decision below by the Massachusetts Supreme Judicial Court, that liability for freight charges is to be determined by principles of common law rather than the Interstate Commerce Act, does not conflict with any holding of this Court. The decisions of this Court cited by petitioner do not purport to interpret the Interstate Commerce Act as imposing liability on any particular party. On the contrary, these cases suggest that liability is to be determined with reference to ordinary contract principles.

Furthermore, the decision by the Massachusetts Supreme Judicial Court is

consistent with decisions rendered by lower federal courts and state courts of last resort. The courts in these cases, faced with determining liability for freight charges, held that such decisions should be made solely with reference to common law principles.

Finally, the Massachusetts decision does not bar the petitioner from collecting freight charges from other persons not parties to this action. These persons may be liable to petitioner on a variety of theories which petitioner may freely pursue.

ARGUMENT

I. The Decision by the Massachusetts Supreme Judicial Court is Not in Conflict with Applicable Decisions of This Court.

The narrow federal question presented for review is whether the liability of Hallamore Motor Transportation, Inc. ("Hallamore") for freight charges is determined with reference to the provisions of the Interstate Commerce Act, 49 U.S.C. §501-11917 (1982 ed.) (the "Act"), or with reference to common law principles.[1/] The holding of the

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[1/] Accordingly, Hallamore does not address herein the separate, state law question whether, under common law principles, Hallamore should have been held liable.

Massachusetts Supreme Judicial Court ("SJC") that common law principles govern did not conflict with any holding of this Court.

Consolidated Rail Corporation ("Conrail") maintains that the SJC reached a decision in direct conflict with this Court's holdings in Pittsburgh, Cincinatti, Chicago & St. Louis Ry. v. Fink, 250 U.S. 577 (1919) ("Fink") and L&N R.R. v. Central Iron Co., 265 U.S. 59 (1924) ("Central Iron"). However, in neither Fink nor Central Iron did this Court purport to decide the question of whether a consignee's liability is determined, in the first instance, under the Act or under common law principles. In Fink, the issue was whether a consignee who

in fact purported to make full payment of freight charges could later be required to pay the higher legal rate, after it was determined that the carrier in fact had undercharged him. The Court examined the purpose of the Act, which, it concluded, was to avoid discrimination by providing "one rate for all shipments." 250 U.S. at 581. It held that, in light of this purpose to establish a single uniform rate, the consignee's initial payment of the charges demanded "amounted to an assumption on the part of [the consignee] to pay the only legal rate the carrier had the right to charge or the consignee the right to pay." Id. at 582. Thus, the Court in Fink did not address the question of whether the Act itself imposes liability in the first in-

stance. It held only that a consignee who assumes an obligation to pay freight charges by making what is later determined to be a partial payment thereby assumes liability to pay "the only legal rate." Id.

Any conceivable doubt about the holding in Fink was certainly eliminated in Central Iron. There, the Court held that a shipper was not liable for freight charges in the absence of an express or implied contract between the shipper and the carrier. The Court noted that the tariff established under the Act "did not provide . . . by whom payment should be made." 265 U.S. at 66. It further noted that delivery of goods to the carrier does not necessarily, "under general law," import a "promise" to pay freight charges. Id.

at 67. Indeed, the Court's entire discussion of the issue of the shipper's liability was couched in terms of contract (express and implied), agreement and promise. Id. at 66-68. For example, the Court stated that the "carrier and shipper were left free to contract, subject to the rule which prohibits discrimination," id. at 66; that "the contract may provide that the shipper agrees absolutely to pay the charges," id.; that the Court's task was to "determine what promise, if any, to pay freight charges was, in fact, made" by the shipper, id. at 67; that a shipper is presumptively liable because "a promise by him to pay . . . is inferred" when the transportation is ordered on his behalf, id.; that this inference may be rebutted "as in the

case of other contracts," id.; and that, upon an examination of all pertinent facts, "the trial court was justified in finding that [the shipper] did not assume the primary obligation to pay the freight charges." Id. at 68. Indeed, even in the very sentence quoted by Conrail in its Petition for Certiorari, at 8, in a clause omitted from that quotation, the Court stated that no contract of the carrier could "release from liability a shipper who had assumed an obligation to pay the charges." Id. at 65. (Emphasis supplied.) In short, Central Iron made it entirely clear that courts should look to principles of contract law rather than to the Act to determine whether a shipper is liable for the payment of freight charges. There is certainly no

reason why a different analysis should be applicable to the determination of the consignee's liability.[2/]

[2/] As presently worded, the Act provides that, when the carrier is instructed to deliver property to a consignee who is an agent only, "the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery," if the consignee gives certain notice. 49 U.S.C. §10744. This provision, which was initially enacted in 1927, after Fink was decided, was clearly intended to be a remedial provision to enable agent-consignees who make partial payment to protect themselves from what would otherwise have been the automatic application of the holding in Fink. By use of the phrase "for which the consignee is otherwise liable," Congress clearly expressed its intention not to expand the consignee's liability beyond what it had been under Fink, before the Act was amended. Thus, the language added by the 1927 amendment surely does not require that a different analysis be used to determine the liability of a shipper

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To the extent that the Court in Central Iron addressed the question of the consignee's liability, it did so in dictum, but that dictum did not conflict at all with the holding in Fink or in Central Iron itself. The Court stated, "For, under the rule of the Fink Case, if a shipment is accepted, the consignee becomes liable, as a matter of law, for the full amount of the freight charges, whether they are demanded at the time of delivery, or not

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[2/](Footnote Continued From Previous Page)

than the one which is to be used to determine the liability of a consignee who, like Hallamore, has not made a partial payment of "rates billed at the time of delivery." 49 U.S.C. §10744.

until later." 265 U.S. at 70. This statement was made in the context of an express agreement by the consignee to pay the charges, id. at 64, and, as in Fink, the consignee had made a payment, at the time of delivery, of charges which were later discovered to be less than the lawful amount. Because the consignee had expressly agreed to pay and because it in fact did pay the amount demanded at the time of delivery, it assumed an obligation to pay "the full amount" by accepting the shipment.

Thus, the SJC properly construed prior decisions of this Court in holding that common law principles of express and implied contract govern the initial determination of a consignee's liability.

II. The Decision by the Massachusetts Supreme Judicial Court is Consistent with Decisions of Other State Courts of Last Resort and of Federal Courts of Appeals.

The foregoing analysis of Fink and Central Iron is fully supported by two federal courts of appeal. In Consolidated Freightways Corp. of Delaware v. Admiral Corp., 442 F.2d 56 (7th Cir. 1971) ("Consolidated Freightways"), which involved the analogous provisions of the Motor Carrier Act, 49 U.S.C. §323, the defendant was designated as the consignee on the bills of lading which, as in the present case, designated a third party as the party to be billed for freight charges. The court held for the defendant, stating:

> [(P)laintiff] . . . strenuously urges that Section 223 of the Motor Carrier Act (49

> U.S.C. §323) imposes absolute statutory liability upon the consignee . . .
>
> We discern nothing in the language or policies of Section 223 to suggest that Congress intended to impose absolute liability upon a consignee for freight charges. . .

Id. at 60-61.

The court then carefully reviewed the fifty year history of the statute and cases decided under it, including Fink and Central Iron, and concluded:

> The undercharge cases are thus consistent with and, indeed, support our conclusion that Section 223 was not intended to fashion a rigid liability upon a consignee. Congress left the initial determination of a party's liability for freight charges to express contractual agreement or implication of law . . . .
>
> So long as payment of the full tarriff charges may be

> demanded from some party, the anti-discrimination policy of the Section is satisfied.

Id. at 62.

The Second Circuit Court of Appeals reached the same conclusion in Roll Form Products, Inc. v. All State Trucking Co., 662 F.2d 150 (2d Cir. 1981) ("Roll Form"). In Roll Form, defendant asserted a right under the Act to pursue consignee-customers of a Chapter XI debtor for freight charges, even though all freight had been shipped under documents showing the freight had been prepaid by the debtor. The court denied liability, on the ground that the Act was intended to eliminate rate discrimination, not to assign liability to any particular party to a shipping transaction. The court stated:

> The Act, in our view, was not intended to "fashion a sword" to insure collection by carriers of freight charges. Nor do we think the Act was intended to impose an absolute liability upon consignees of freight charges. Its sole purpose was "to secure equality of rates to all and to destroy favoritism." . . . . Accordingly, in the absence of discriminatory practices, we agree with the Seventh Circuit [in Consolidated Freightways] that "Congress left the initial determination of a party's liability for freight charges to express contractual agreement or implication of law." (Citations omitted.)

662 F.2d at 154.

Similarly, modern decisions by state courts recognize that the Act does not impose absolute liability on consignees or on any particular party. In Lyon Van Lines, Inc. v. Cole, 9 Wash. App. 382, 512 P.2d 1108 (1973), the carrier sought to collect freight

charges associated with the move of defendant's household belongings to his new place of employment. Defendant's employer had agreed to be responsible for the moving expenses, but defendant had been named as consignee. After a review of several federal decisions, including Fink, Central Iron, and Consolidated Freightways, the court denied recovery. The court stated:

> In Consolidated Freightways, the court offered a distinction between the imposition of liability for freight charges and the furtherance of the antidiscriminatory purposes of 49 U.S.C. §323. The court noted that in Fink and its progeny, the Supreme Court ascertained which party was liable for the freight charges independently of its consideration of whether the statutory requirements that the full tariff rate be charged were met. In other words, the

> concern manifested in Fink was to insure that equal rates at the full legal level were charged by all common carriers, rather than to determine who was to pay such charges in every case. (Emphasis in original.)

512 P.2d at 1112.

Chicago & Northwestern Transp. Co. v. Krohn Cartage Co., 79 Wis.2d 39, 255 N.W.2d 310 (1977), is also consistent with the foregoing analysis. There, a consignee who "accepted" a small portion of a shipment was held liable for freight charges on that portion only, but not for charges associated with a much larger portion of the entire shipment. The court stated:

> Merely being named as consignee of the shipment in the absence of an express contract or in the absence of conduct which will, by implication, impose liability does not subject a consignee to the obligation to pay the freight charges.

255 N.W.2d at 313.

The court then considered more closely the question of the nature of the conduct which, in the absence of an express agreement, will suffice to impose liability on the consignee. Since the consignee had actually received a portion of the shipment at its own facility, it was liable, presumably under a theory of implied contract, for freight charges only on those goods which it received. Since the court looked to the conduct of the consignee to determine whether it had exercised dominion and control over the property rather than to the Act itself, its analysis was consistent with the view of the SJC and with prior decisions of this Court that liability is determined

with reference to ordinary contract principles.

III. The Decision by the Massachusetts Supreme Judicial Court Does Not Bar Conrail from Collecting Freight Charges.

Conrail erroneously argues that the SJC's decision bars it from recovering freight charges from any entity. In making this argument, Conrail seriously underestimates the ability of the common law to assign liability to any of four parties. First, Conrail completely overlooks the potential liability of Eastern Steel Services, Inc., the actual recipient of the freight and presumably one of the parties on whose behalf the freight was shipped.

Second, despite Conrail's arguments to the contrary, Davis Machinery

Company, Inc. ("Davis"), another party on whose behalf the freight was shipped, may well be liable. Conrail cites Payment of Detention Charges, Eastern Central States, 335 I.C.C. 537 (1969), aff'd sub nom. Middle Atlantic Conference v. United States, 353 F. Supp. 1109 (D.D.C. 1972) ("Eastern Central States") for the proposition that Davis cannot be held liable. Petition for Certiorari at 17. However, Eastern Central States held only that an entity which is not otherwise a party to the shipping contract cannot be held liable for detention charges. It did not hold that a party is insulated from liability merely because it is identified in shipping documents as the party to be billed. Davis's liability would therefore turn

upon facts which were not part of the record below. For example, if it requested FMC Corporation ("FMC"), the shipper, to ship the crane to Eastern Steel Services, Inc., or if it otherwise, by express agreement or knowing acquiescence in FMC's designation of Davis as the party responsible for freight charges, assumed an obligation to pay, there is nothing in Eastern Steel Services which would relieve it from liability.[1/]

[1/] Indeed, by placing emphasis on the requirement that an entity be a "party to the contract of transportation" in order to be held liable for detention charges, 335 I.C.C. at 542, Eastern Central States lends support to the holding of the SJC that liability for freight charges is a matter of contract law.

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Third, it is at least conceivable that FMC represented to Conrail that Davis assumed the obligation to pay. Again, the record is silent on this question. If such a representation had been made and was in fact false, FMC might be liable under a common law theory of misrepresentation, notwithstanding its having executed the "non-recourse clause" on the bills of

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2/ (Footnote Continued From Previous Page)

Moreover, in affirming the decision by the Interstate Commerce Commission, the district court expressly adopted the Commission's conclusion that Section 223 of the Interstate Commerce Act, 49 U.S.C. §323, which is the provision relied upon by Conrail, is a "nonliability" provision which "in no way can be read to impose liability on an agent not a party to the contract." 353 F. Supp. at 1120.

lading. For present purposes, it is sufficient to state that the record does not affirmatively support Conrail's contention that FMC is absolved from all liability.

Finally, as noted in the Agreed Statement of Facts, at paragraph 19, Conrail made a demand on Oxhandler Structural Enterprises, Inc. ("Oxhandler"). Again, the record is silent on Oxhandler's role, but it is conceivable that Oxhandler was a freight forwarder who, by express agreement or by conduct sufficient to imply a contract, agreed to pay the freight charges. The point again is simply that it cannot be determined, based upon the record below, whether Oxhandler or, indeed, some other entity not named at all in the Agreed

Statement of Facts, assumed an obligation to pay. In short, Conrail cannot sustain its assertion, based upon the present record, that it "is powerless to avoid the imposition of the penalties provided for violations of the Interstate Commerce Act." Petition for Certiorari at 18.

CONCLUSION

For all of the foregoing reasons, Conrail's Petition for Writ of Certiorari should be denied.

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